**THE DANISH
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HUMAN RIGHTS**

# LESSONS FROM RESEARCH ON NATIONAL HUMAN RIGHTS INSTITUTIONS

## A DESK REVIEW ON FINDINGS RELATED TO NHRI EFFECTIVENESS

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# EXECUTIVE SUMMARY

This report looks at the academic research literature on National Human Rights Institutions (NHRIs). This field of research has significantly expanded in recent years and now represents a relatively comprehensive and diverse body of work. Among its merits is that it is independent and peer-reviewed and offers external, analytical perspectives on the work of NHRIs. The report documents that the question of NHRI effectiveness is one of the major themes addressed.

The report presents the main findings from an analysis of the literature. This includes a few quantitative longitudinal studies covering a 30-40 year period that shows that the presence of NHRIs have various beneficial impacts. It also presents the findings from more qualitative studies that have taken a closer look at specific NHRIs and their achievements. A general observation is that the research literature has moved from advocating how to enhance the effectiveness of NHRIs to in recent years focusing much more on actual analysis of NHRI effectiveness in practice.

The research on NHRI effectiveness shows a good grasp of the topic both in terms of the country contexts that NHRIs operate in - and that to a large extent determines how successful the promotion and protection work of an NHRI can be – as well as in terms of the role the Paris Principles play in facilitating effective NHRIs. There are constraints built into these Principles.

Drawing on the research literature, the report looks at NHRIs as both "structures" and "agents" and also presents a recently developed (November 2017) theoretical model for assessing NHRI effectiveness. The report concludes by highlighting four elements that the research literature seems to regard as particularly important for NHRIs to achieve effectiveness. The four areas are:

1. Public Legitimacy
2. The Complaint-handling role
3. National inquiries (including the mandate to investigate and publish reports)
4. Formal institutional safeguards (to protect the NHRI against external pressures or threats)

The conclusion also calls for the community of NHRIs to engage more deliberately and systematically with the effectiveness agenda. As 2018 marks the 25th anniversary of the UN General Assembly's adoption of the Paris Principles this would seem a timely intervention.

# INTRODUCTION

This report presents an analysis of the research literature on National Human Rights Institutions (NHRIs). The aim has been to capture what we can learn from this research about the achievements and effectiveness of these institutions.

There exists now a significant body of research on NHRIs which continues to expand. The basis for this report has been the compilation of a comprehensive bibliography on NHRI research literature. The bibliography reveals that there are somewhere between 180-190 research publications (journal articles, anthology chapters, monographs and some research-based analytical/policy reports) on NHRIs. This represents a substantive body of work that can be drawn on more systematically. It can inform international discussions as well as practical work focused on strengthening NHRIs. It can thereby inform efforts to hold these institutions more accountable in achieving their mandate and their goals.

The NHRI research literature has two important features: the research is **independent** and **peer-reviewed**. This gives the research literature a credibility that is helpful to enhance the debate on the effectiveness of national human rights institutions.[1] This can be beneficial both to the debates within the community of NHRIs and to NHRI engagement with a range of external actors.

In addition, the NHRI research now contains significant variation in terms of method, approach, theoretical inspiration, geography, thematic focus and research aims and this diversity lends further credibility to drawing lessons from the research literature. The fact that this field of research has matured significantly since the 1990s – e.g. by deepening its critical gaze by moving from often descriptive to more analytical approaches gives further legitimacy to the credibility claim. Finally, as 2018 represents the 25th anniversary of the UN General Assembly's adoption of the Paris Principles it is only timely to expand and consolidate our knowledge base on NHRI work.

## GUIDING QUESTIONS

This report therefore tries to extract lessons and findings from the NHRI research literature. The guiding questions have been: What do we know? What lessons can we distill from NHRI work in their domestic settings?

# TRENDS IN THE NHRI RESEARCH LITERATURE

The NHRI research literature is substantial. Since 2007, there has been a significant annual output of NHRI research (approx. 6-10 publications). There has almost every year since 2011 been published either an anthology on NHRIs or a PhD dissertation on NHRIs has appeared – both representing a deepening of research work on the topic. It is possible to identify some key scholars (Sonia Cardenas, Richard Carver, Tom Pegram and Rachel Murray) but the field is diverse with vital contributions from non-Western scholars (Ken Setiawan, Obiora Chinedu Okufor, Beredugo Ayabaesin).

This level of output in the last decade shows that NHRI research has gained both interest and attention since the 1990s when the Paris Principles were adopted. In fairness, it should be noted that the body of research has to some degree older origins, namely research focusing on the work of Ombudsmen Institutions – a research field that dates back to the late-1960s. However, it is the emergence of NHRIs as domestic institutions in human rights implementation that has been the driving factor behind the increased attention to these institutions.

The volume of research allows us to make some analysis of research trends. It is particularly interesting to assess the geographical and thematic focus and scope of NHRI research. This analysis has been made based on the comprehensive bibliography developed for this analysis.

Table 1 shows the geographical focus in the research literature regarding attention to specific NHRIs. The publications identified were either specific case studies of one NHRI or included a substantive amount of information on a specific NHRI to qualify for inclusion. It should be mentioned that there is a section of the literature that takes a regional approach (e.g. Ombudsmen in Latin America or NHRIs in the Asia-Pacific region) but these contributions have not been included as the regional approach at a first glance is too over-arching to provide substantial analysis of specific NHRIs. Furthermore, the more thematic focused research will often provide with specific examples of NHRI efforts but again this is deemed too generic to count here. The analysis reveals the following geographical spread:

## TABLE 1: GEOGRAPHICAL FOCUS OF NHRI RESEARCH, 1997-2017
## (BASED ON 190 PUBLICATIONS IDENTIFIED)

| NHRI/Country | Number of Research Publications dealing with specific NHRIs | Year of Publication |
| --- | --- | --- |
| Malaysia | 7 | 2003, 2006, 2007, 2009, 2010, 2013, 2017 |
| India | 7 | 1998, 2000, 2000, 2001, 2003, 2005, 2013 |
| Uganda | 7 | 2000, 2002, 2002, 2005, 2005, 2012, 2014 |
| Ghana | 6 | 2000, 2001, 2002, 2005, 2013, 2014 |
| South Africa | 6 | 2000, 2002, 2002, 2003, 2012, 2014 |
| Northern Ireland | 5 | 1998, 2003,2005, 2007, 2009 |
| Mexico | 4 | 2005, 2007, 2008, 2012 |
| Nigeria | 4 | 2000, 2002, 2012, 2014 |
| Indonesia | 3 | 2007, 2013, 2016 |
| Peru | 3 | 2008, 2011, 2017 |
| Bolivia | 3 | 2006, 2012, 2013 |
| Philippines | 3 | 2005, 2007, 2017 |
| Denmark | 3 | 2005, 2009, 2013 |
| Germany | 3 | 2009, 2011, 2012 |
| Kenya | 3 | 2004. 2005, 2010 |
| El Salvador | 2 | 2000, 2004 |
| Colombia | 2 | 2000, 2006 |
| Ethiopia | 2 | 2000, 2013 |
| Guatemala | 2 | 2004, 2006 |
| Argentina | 2 | 2000, 2012 |
| Australia | 2 | 2005, 2015 |
| Bosnia-Hercegovina | 2 | 2007, 2009 |
| Nepal | 2 | 2005, 2011 |
| Cameroon | 2 | 2000, 2013 |
| Honduras | 1 | 2000 |
| Namibia | 1 | 2000 |
| Canada | 1 | 2000 |
| Malawi | 1 | 2000 |
| Costa Rica | 1 | 2000 |
| Sri Lanka | 1 | 1998 |
| Taiwan | 1 | 2001 |

| South Korea | 1 | 2002 |
|---|---|---|
| Hong Kong | 1 | 2003 |
| Fiji | 1 | 2005 |
| Nicaragua | 1 | 2006 |
| Czech Republic | 1 | 2009 |
| Afghanistan | 1 | 2005 |
| Poland | 1 | 2013 |
| Japan | 1 | 2017 |
| Chile | 1 | 2017 |
| 40 countries in total | | |

Malaysia, India, Uganda, Ghana and South Africa and Northern Ireland are the most studied. Among the other NHRIs with most entries above are Peru, The Philippines, Mexico, Bolivia and Nigeria. While Malaysia with seven research publications – one of them a PhD Dissertation from 2013 - has been particularly well-studied, it is difficult to conclude that there is a critical mass of research that can give us detailed, pluralistic and thereby more representative insights into the workings of a certain number of NHRIs. For 27 of the NHRIs they have only been covered once or twice by researchers and for many they took place in the earlier phases of the 20-year timespan applied for the analysis.

The data here provide an interesting overview but it also shows that the research literature does not offer the critical mass to on its own offer comprehensive insights into more than a handful of NHRIs.

What is important to note is that the whole of Western Africa – or Francophone Africa in general – is not captured in the research literature (apart from two studies about Cameroon). The experiences of the NHRIs in this part of the world are simply not part of the conversation in the research world. This is a concerning and critical gap that may distort the picture of what we know about NHRIs and what the critical issues are for NHRI work and human rights implementation as well. This sub-regional non-appearance can be contrasted with the strong presence of Latin American institutions. There has been a stronger tradition of research into Latin American Ombudsmen Institutions and this has merged with the field of NHRI research.

Table 2 has aimed to analyze the patterns in the thematic focus of NHRI research. The method of analysis was as follows. First, one keyword was identified based on the title of each publication featured in the bibliography. The findings were mainly indicative and showed that it was relevant to develop a finer type of analysis. The next step taken was to identify 3-5 keywords per publication which was done

by reviewing abstracts or introductions from every publication available in the electronic library compiled in developing this report (169 publications in total). A total of 715 keyword entries were identified across 162 different keywords (mainly thematic keywords but also a number country keywords were found). The results from this analysis is featured in Table 2 where all the keywords appearing 5 or more times are listed in ranked order:

**TABLE 2: THEMATIC FOCUS OF RESEARCH ON NHRI, 1997-2017 (REVIEW OF 169 RESEARCH PUBLICATIONS ON NHRIS)**

| Ranking | Keyword | Number of times featured |
|---|---|---|
| 1. | Effectiveness | 77 |
| 2. | General overview | 59 |
| 3. | Protection Role of NHRIs | 56 |
| 4. | Independence of NHRIs | 37 |
| 5. | Accountability/Legitimacy | 34 |
| 6 | Complaint-handling | 27 |
| 7. | Ombudsman | 23 |
| 8. | Partnerships and NHRI Cooperation (incl. ICC) | 23 |
| 9. | HR Commissions | 18 |
| 10. | Paris Principles | 17 |
| 10. | Economic, Social and Cultural Rights | 17 |
| 12. | NHRIs and UN Human Rights System | 13 |
| 13. | Governance (state and global) | 10 |
| 13. | Regional Overview - Europe | 10 |
| 13. | Regional Overview- Asia-Pacific | 10 |
| 16. | India | 9 |
| 17. | Monitoring | 8 |
| 17. | Architecture (type) | 8 |
| 17. | NHRIs and Regional Mechanisms | 8 |
| 17. | Uganda | 8 |
| 17. | Education | 8 |
| 17. | Domestication | 8 |
| 23. | Malaysia | 7 |
| 23. | South Africa | 7 |
| 23. | Ghana | 7 |
| 26. | Compliance | 5 |
| Total | | 514 (The remaining 201 entries are spread over 136 other keywords). |

What is highly noticeable is how prominent **effectiveness** features in this overview. It is clearly the most significant theme. The second category "General Overview" mainly reflects that many introductory or generic articles on NHRIs have been written and published over the years. It certainly seems like a less substantive category than those that follow immediately after in the Table above. The next four keywords in the ranking are "Protection role of NHRIs", "Independence of NHRIs", "Accountability/Legitimacy" and "Complaint-handling". These are substantive topics of critical significance for the functioning of NHRIs. They are also factors that are relevant to the overall question of effectiveness. Table 2 provides an interesting quantitative analysis of the main themes in NHRI research. It is relevant from here to explore in more qualitative ways what the findings on effectiveness in the research literature actually are.

# LONGITUDINAL STUDIES ASSESSING NHRI IMPACT OR EFFECTIVENESS

One approach to studying effect, effectiveness or impact is to try and design an approach that captures a long time-span. One of the most influential NHRI scholars Sonia Cardenas has argued that "assessing these institutions therefore requires adopting a highly mediated and long term view of human rights change and state compliance."[2] The long-term perspective to NHRI functioning is often not the approach taken as it presents logistical and financing challenges for researchers. However, there are about a handful research publications that have tried to analyze effect over a 30 to 40-year timespan. In this context, they can be labelled longitudinal studies.

This type of research presents a potentially interesting approach but also some significant challenges. These are quantitative studies that rely heavily on certain data sets that are more or less well-equipped to answer effect or effectiveness questions in depth. In a study of Human Rights Ombudsmen Institutions with data covering 16 countries in Latin America over a 30-year period, Erika Moreno concludes that the presence of "an ombudsman has tangible effects on improvements in access to education, health and housing."[3] These are deemed "statistically significant and positive effects." Placed in the context of a larger body of literature on ombudsman institutions in the region Moreno further concludes that "the ability of this agency to effect change has the potential to profoundly affect democracy and the public's assessment of democracy's value."[4] These are ambitious findings linking alleged correlation or causalities to larger-scale conclusions on promotion of democratic rule.

In a global study on "Assessing the Impact of National Human Rights Institutions, 1981 to 2004", Wade M. Cole and Francisco O. Ramirez conclude:

> "that stronger human rights institutions are no more or less effective than their weaker counterparts. Rather, we show that the efficacy of NHRIs is shaped by the substance of different rights outcomes, not organizational structures and powers."[5]

A finding that organizational capacity and strength or the NHRIs strategic operation in a specific political context has no influence on the effectiveness of an NHRI appears at best counterintuitive. Nevertheless, this is what Cole and Ramirez argue repeatedly. They link this to the following argument, namely that "NHRIs

improved physical integrity rights outcomes, but they were not associated with civil and political rights outcomes."[6] This argument has several problems. First of all, physical integrity rights are in themselves civil and political rights so their division does not seem consistent with established human rights categories or law. Cole and Ramirez also argue that "if the organizational effectiveness that comes with age is important, the COs [classical ombudsmen], will be more effective than HROs [Human Rights Ombudsmen] and HRCs [Human Rights Commissions]."[7] However, the classical ombudsmen often do not have much of a human rights mandate – or at least a very limited one – so their agency in the human rights sphere will often be negligent or non-existent. Cole and Ramirez seem to draw rather arbitrary comparisons where the availability of data-sets have overridden a more qualitative assessment of actual comparability. Despite a solid grounding in the research debates on the impact of international human rights treaties on country-level practices, the two scholars seem to draw their analysis into terrain where it does not rest on solid enough foundations because of the level of abstraction, problematic assumptions and the lack of basic qualitative distinctions. The global dataset represents a quantitative method that has pushed the analysis to be so generic and abstract that it is actually disconnected from the object of study (if that object is deemed to be NHRIs). This problem is reflected in statements such as:

> "NHRIs emerged in nineteenth century Europe to investigate alleged instances of government maladministration, but they expanded rapidly – and also acquired an explicit human rights mandate – over the past four decades."[8]

This notion of an NHRI points to a larger definitional problem – see below – and raises questions about what is actually being analyzed and whether this analysis in any way really speaks to the issue of NHRI effectiveness. The answer to the latter seems to be a no. The method seems to be a stumbling block to draw precise findings reflecting the actual work of NHRIs. The same is very much the case for a related study by Jeong-Woo Koo and Francisco O. Ramirez from 2009 on the worldwide expansion of NHRIs from 1966-2004. This study speaks to sociological theory and data processing and applies some generic hypothesis-testing but despite the interesting title it provides little in terms of detailed insights on the work of NHRIs.[9]

It is tempting to conclude that this type of longitudinal study brings very little to the NHRI research field. Researchers have been producing much more in-depth research with a finer granularity when it comes to understanding the work of NHRIs and the potential effectiveness of their work but have operated with much shorter time-frames. But there are additionally studies, which like Moreno's study of Latin America, make more specific and precise connections and these deserve attention.

In a 2017 study published in the **Journal of Human Rights**, Ryan M. Welch has analyzed the connection between the Convention Against Torture and NHRIs.

The data cover 153 countries in the period 1981-2007. The study contributes to a long-standing debate that has questioned whether a state's ratification of the Torture Convention actually brought positive benefits. Scholars such as Oona Hathaway have argued that data show that an increase in acts of torture took place after countries ratified the Convention – a controversial intervention in the human rights debate when this proposition was first made in 2002. It has been the subject of continued debate and studies. Welch's data analysis leads to the conclusion that "when states ratify the CAT **and** have an NHRI, state torture decreases" and that this relationship is causal: "This study shows that NHRIs are responsible for making the CAT effective by increasing information."[10] The final conclusion put forward by Welch is a positive one, namely that "Given that a top concern for NHRI effectiveness is budget constraints (…), investing in existing NHRIs to make them more capable of making international treaty obligations meaningful would be an effective strategy to improving respect for rights internationally."[11]

This quantitative research does point to one other noteworthy issue. There is a discrepancy in the definition of an NHRI between the world of practice and the field of research. This is an important discrepancy. While practitioners tend to follow the NHRI criteria set by the Paris Principles and the decisions from the ICC/ GANHRI accreditation process, this is not an approach that necessarily sits well with researchers. The research approach is independent of the former and is not obliged to abide by these criteria. As Linda Reif has argued:

> "Human rights researchers need to be aware of NHRI definitional boundaries implemented in different contexts and move beyond them if necessary to explore the full range of domestic institutions involved in human rights protection and promotion that may be active in a nation."[12]

These two modes of approaching the topic should be acknowledged. The problem is, however, when the NHRI label is used interchangeably and obscures that, it represents a different – if overlapping – range of institutions. Cole and Ramirez certainly confuse the discussion and this makes their claims – positive or negative - about the effectiveness of National Human Rights Institutions harder to support. While the longitudinal approach may have some benefits, the tensions between quantitative and qualitative studies and how well they actually capture NHRI effectiveness remains.

# THE CONTEXT FOR ASSESSING NHRI EFFECTIVENESS

The research literature shows a strong awareness of the fact that there are important qualifiers to be made before an assessment of the effectiveness of National Human Rights Institutions can be undertaken in a credible way. One key issue has been a discussion of the extent to which an NHRI is actually responsible for its own effectiveness. Clarifying this has important ramifications for the whole debate. In 2012, Ryan Goodman and Tom Pegram laid out the challenge very well:

> "An NHRI might, for example, perform well in monitoring human rights abuses, but other institutions – the media and human rights advocacy organizations – may fail to build on that work. How far should an NHRI be expected to be engaged in media promotion and in building its legitimacy with the public, and how much of that responsibility should be assigned to these other institutions. ... Framed in this manner, a lack of compliance with NHRI recommendations may reflect the failure of complementary actors to fulfill their democratic or accountability function rather than the failure of an NHRI. A conscious regard for such considerations should inform academic researchers' and practitioners' assessment of the potential effectiveness of an NHRI."[13]

This is not merely a timely reminder but also poses a fundamental dilemma. The first challenge is then how to define and measure NHRI effectiveness and how to establish in what ways NHRIs can be held accountable for their effectiveness in their different contexts. They are a national entity operating within a wider national human rights system that functions across a larger political set-up – a set-up that is often deeply constraining for national (and international) human rights actors. It is a point that has been addressed by several others. Richard Carver and Alexey Korotaev wrote in 2007:

> "Of course, the efficiency of the NHRI's activities depends significantly on the level of development of democratic institutions and judicial system in the country. NHRI cannot usually be much better than the general level of institutional development and effectiveness in the country.  They have to develop and improve together. But there is a complex two-way relationship: active, consistent and efficient NHRIs can greatly contribute to the democratic development of their country."[14]

Carver expressed this in a slightly different way in 2010:

> "It is certain that many NHRIs do not perform effectively, but this is more symptomatic of state failure to meet human rights obligations than an inherent problem with NHRIs – many judiciaries are insufficiently independent, for example, but this does not invalidate the role of the judiciary in enforcing human rights."[15]

Rachel Murray – another key researcher focusing on NHRI effectiveness – has echoed these points:

> "the research we have done indicates quite clearly that it is not one of the factors mentioned above alone that can render a NHRI effective, but a combination of them. Some are clearly the responsibility of a NHRI itself as to how it chooses to prioritise and organise its work, but a considerable impact on its effectiveness falls outside of its control."[16]

There is general agreement on several key points in the more recent and more developed NHRI research.

Firstly, the relationship between NHRI internal and external factors is something that needs to be addressed in research design, methodology and analysis in order to provide fair and adequate answers to the important question of effectiveness. Secondly, the political context is decisive and NHRIs that have been effective or have achieved important results in certain areas can sometimes easily be set back or undermined by political forces that feel challenged or threatened in the conduct of their power. NHRI effectiveness cannot be a simple progress narrative of consolidation, expansion and improved strategic positioning. Thirdly, there is also wide agreement that the nature of independence, function(s) and accountability in the set-up of the NHRI has a rather direct influence on both its legitimacy and effectiveness. There are clear tensions in this relationship as captured by Meg Brodie in 2015:

> "There is an inherent tension in the concept of an NHRI: states which establish an NHRI may not want to be held to account by an independent, powerful and well-resourced entity. ... As a result, NHRIs formal powers are often circumscribed, limited, or influenced by state actors, and this has led to criticisms that NHRIs are weak, or incapable of creating real change."[17]

This realization is certainly not alien to the community of NHRIs and much has been done to counter this reality through the coordination efforts of regional networks, capacity building initiatives, international alliance-building and accreditation procedures. However, some of the research literature emphasizes the shortcomings of these efforts vis-à-vis ensuring effectiveness. One of the most

critical researchers, and a former practitioner in the field, Peter Rosenblum argued in 2012:

> "Because the international entities most involved with NHRIs, including the International Coordinating Committee of NHRIs (ICC) and the Office of the High Commissioner for Human Rights (OHCHR), do not focus on the effectiveness of NHRIs, there is little external pressure on them to show results."[18]

Rosenblum continued:

> "The promotional project of expanding the number, resources, and access of NHRIs has colored the analysis of actual institutions and undermined systematic evaluation."[19]

This may open old questions but those questions still require an adequate and articulate answer. As the exploration of NHRI effectiveness expands it will be necessary to respond to the question: Why NHRIs? Gauthier De Beco and Rachel Murray have raised the question in the following way:

> "As treaty bodies in the UN, NHRIs themselves and civil society organisations (CSOs) lobby for the establishment of NHRIs in each State, and as the number of NHRIs increases globally, the underlying question may be overlooked: is an NHRI always necessary and desirable? Discussion of NHRIs centres mostly around their compliance with the Paris Principles moving beyond the initial question of whether they are needed at all."[20]

If this is a question raised by NHRI researchers, it is the practice side of NHRI work that most urgently needs to be able to answer this. This can be based on experience and evidence from practice but can also rely on arguments and findings from the research side of the NHRI equation. Richard Carver has reminded us that NHRIs were an answer to a critical and long-standing concern faced in international human rights work since this emerged after the Second World War. With a position likely to be shared by many, he argued in 2010:

> "The view of the Office of the High Commissioner for Human Rights is that NHRIs are an answer to the old question of the implementation gap – the inconsistency between formal treaty obligations and actual respect for human rights on the ground."[21]

# NHRI EFFECTIVENESS – AN EVOLVING RESEARCH AGENDA

The question of the performance of NHRIs has been on the research agenda from at least the year 2000. The question was, however, often posed slightly differently than it is today. Some parts of the research literature were conducted by individuals supporting the establishment of National Human Rights Institutions and parts of this literature was written by insiders working at these institutions. They compiled and shared experiences and tended to focus on institution building and on structure and function - two aspects of NHRI work on which the Paris Principles are explicit.

The Paris Principles have been foundational also to the field of research as these principles served as a template around which NHRIs throughout the world have been designed.[22] This means they are potentially a vital part in determining and achieving effectiveness but the Principles themselves have been subject to scepticism by researchers. In 2015, Gauthier de Beco and Rachel Murray wrote:

> "However, the Paris Principles are not without criticism. They are arguably narrow in their focus, looking primarily at issues affecting the establishment of an NHRI rather than how the NHRIs perform in practice."[23]

Rachel Murray had previously addressed this line of argument and exemplified areas where the Paris Principles fell short when it came to adequately assessing the issue of effectiveness:

> "Thus, the Paris Principles are said to rely too much on legalism, they are not often judged on how they can be used as a resource by others and on how much attention they pay to the most vulnerable in society."[24]

In a contribution to this debate from 2017, Katerina Linos and Tom Pegram alluded to the limitations of the Paris Principles and their problems when promoting the effectiveness agenda. Their concerns with the Paris Principles framework are implicit but nevertheless directed at them:

> "Effectiveness should be measured not by adherence to a script of globally preferred design features, but on assessment of the extent to which an NHRI has improved human rights protections. Grading based on formal compliance does risk bias."[25]

This articulates what reasonably could be described as a position around which there is widespread consensus and the above comments point to the direction wherein the current research is heading. That means moving beyond the traditional framing and grip that the Paris Principles have had on the NHRI debates. Linos and Pegram believe that the ICC/GANHRI have started to embrace this move within its accreditation process, as they write that "Grounds for grading and downgrading have increasingly focused upon performance rather than design."[26]

# WHAT DO WE KNOW ABOUT NHRI EFFECTIVENESS?

The shift in the discussion reflected in the research literature can be summarized as follows. Previously the writings on NHRI performance tended to be concerned with the following question: **How can we enhance the effective functioning of NHRIs?** This often reflected an experience-based form of analysis – a hybrid of research and practice - that was to inform future efforts.[27] The question asked in more recent literature is based on a more analytical approach that asks: **What do we know about the effectiveness of National Human Rights Institutions?**[28] This development shows the maturing of NHRI research. It is fair to say that the question of effectiveness is the major issue that ongoing research on NHRIs is trying to provide answers to. This reflects a larger trend in human rights research where questions about effectiveness have gained prominence.[29]

In 2017, there were approximately 121 NHRIs in existence (up from about 20 in the early 1990s). Out of these 121 NHRIs today, 78 of them are accredited with an "A" status – the highest ranking possible in the formalized review process conducted by a designated sub-committee to the Global Alliance of National Human Rights Institutions (GANHRI). As Table 1 indicated, only a very limited number of these have been covered in the research literature. To be fair, the research does contain many examples and anecdotal evidence of NHRI work, experiences and challenges – beyond what that table captured – but often these are illustrative points and not detailed analysis. There is a **representation gap** when it comes to more fully answering the questions related to NHRI effectiveness. There is also an **evidence gap** despite the concerted efforts by a number of researchers to remedy this.

In her PhD dissertation, Corina Lacatus developed data-sets in order to draw findings on the relationship between NHRI design and their strength.[30] She looked at six design dimensions, namely (i) de jure independence; (ii) nature of the mandate; (iii) autonomy from government control; (iv) predominant de facto duties; (v) pluralism of representation; (vi) staff and financial resources. She also looks at diffusion, socialization and incentive-setting in the larger context of NHRI work and support to them. The data, which primarily focus on Europe, merit a closer look but the findings are interesting. She concludes her study with specifying the following main findings from her research:

• International institutional networks play a key role in the creation of strong national institutions;

- Countries that have undergone the ICC accreditation process are more likely to have strong NHRIs;

- Countries that have been subjected to EU conditionality due to their accession candidate status are also more likely to have institutions with stronger design;

- Cross-border processes can play a key role in explaining patterns of strong design of NHRIs around the world;

- High density of strong national human rights institutions in a region is likely to lead governments deciding to establish stronger NHRIs.

Her research highlights both the value of peer review and peer networks and that international funding support to enhance the capacity of NHRIs have had a beneficial effect on their strength.

Sonia Cardenas has argued that National Human Rights Institutions should be regarded as both structures and agents:

> "As 'structures' they serve as spaces in which social interaction and communication occurs; as agents they 'do things.' The conceptual challenge is to assess an institutions influence in a way that captures its twofold nature, or its dual role as structure and agent."[31]

This is a helpful analytical distinction because the NHRIs operate within a larger human rights system or ecology. As mentioned earlier, researchers have discussed how this position influences the way to assess the effectiveness of NHRIs.

The idea of NHRIs as "structures" has been captured by researchers in ways that speak to the effectiveness debate. Table 3 presents some of the actual findings by researchers on this aspect. These points should be seen as conclusions about what NHRIs are actually contributing to human rights protection based on detailed research and analysis. They are not merely aspirations about what researchers think the role of NHRIs should be.

## TABLE 3: STRUCTURAL AND SPATIAL DIMENSIONS OF NHRI EFFECTIVENESS

| | |
|---|---|
| "An NHRI reframes the structural context in which the broader state apparatus operates." | Cardenas (2014) |
| "has created a social space for public deliberation over wrongdoing" | Brodie (2015); Cardenas (2014) |
| "upholding an important component of an inclusive democratic political regime – a stable and enforceable rights framework" | Pegram (2010) |
| "exercised a decisive moral authority over rights-discourse in the public sphere, resulting on a number of occasions in embarrassing about-turns on government policy that contravened human rights standards" | Pegram (2010) |
| "a component in the structure of political opportunities human rights activists face" | Meyer (2012) |
| "an NHRI can establish a symbolic and rhetorical foundation for collective action. It creates a platform for professionals to reaffirm those standards and assess the state's progress in meeting them." | Meyer (2012) |
| "the ability of this agency to effect change has the potential to profoundly affect democracy and the public's assessment of democracy's value" | Moreno (2016) |
| "torture is so common that some refer to it as a 'normal' tool of statecraft ... NHRIs offer victims a place to air grievances apart from the state apparatus that perpetrated their torture." | Welch (2017) |
| "The need to constantly negotiate space in a climate of impunity cannot be overemphasized. ... By taking to task not only national actors, but also international actors, for human rights violations, the AIHRC is proof that a national institution committed to human rights promotion and protection can use its mandate effectively and creatively, particularly in circumstances where civil society is too weak and government too ineffective to amplify the voice of the voiceless. | Sajjad (2009) |
| "NHRIs take center stage as a possible 'missing link' in a transnational human rights regime..." | Linos and Pegram (2017) |
| "A distinctive aspect of NHRIs is the space in which they maneuver: an imagined space somewhere between the state and civil society." | Mertus (2009) |
| "Empowered by human rights, which turns all citizenry into rights holders and the state into a duty bearer, the polity created and watched over by an NHRI is more resilient to new conflicts and better equipped to address past violations and present communal tensions peacefully." | Mertus (2009) |

These are all important structural or spatial features of NHRIs contributions to human rights protection - contributions that can produce significant impact. However, it may be worth observing that they are not explicit as regards protection for "vulnerable groups" and this is an area where NHRIs should perform a structuring and documentable role in national human rights promotion and protection.

## AGENCY AND NHRI EFFECTIVENESS

The research literature identifies a number of features of NHRI work that signify or stand out as markers of their effectiveness. A number of these features are elaborated below.

### Public Legitimacy as a Marker for Effectiveness

Public legitimacy is identified as a marker for effectiveness by several researchers. Anne Smith writes that "public legitimacy is pivotal to a NHRI's reputation and credibility." According to her analysis "public legitimacy" is often mentioned in the context of the terms accountability and independence of an NHRI and "independence and accountability are multi layered concepts, and it is only by unearthing the different levels within each concept that one captures the problems facing NHRIs and those responsible for establishing them."[32]

This line of reasoning helps illustrate why it has proven so challenging to get a grasp of the NHRI effectiveness agenda. It requires multi-faceted forms of analysis to get to the heart of the matter. The comprehensive human rights framework with a wide range of international legal standards is also a factor. An NHRI has a very broad range of stakeholders and perceptions about performance may vary widely and have a direct impact on how the public views the effectiveness of an NHRI. Managing budget constraints, defining strategic priorities, developing capacity and focusing interventions to have the greatest possible impact has to be held up against the process by which public perceptions are shaped and circulated. As Sonia Cardenas explains:

> "Since NHRIs operate across a spectrum of issues, it is important to remember that effectiveness in one area will not necessarily amount to effectiveness in another. An NHRI that is especially active in protecting disability rights, for example, may be relatively unresponsive to the abuse of indigenous rights."[33]

Obiora Chinedu Okafor has developed a conceptual framework that tried to make public legitimacy part of the approach to evaluating NHRI performance. In an assessment of the South African, Ugandan and Nigerian NHRIs, Okafor operated with three main criteria. The first criterion was labelled "excessive legalism" and examined to what extent an NHRI is able to balance its legal and its broader mandates. Did an NHRI assign "too central a role to its 'court-like function and features in its organizational framework, its sense of institutional self, and its practice" or did it also ensure a sufficient focus on the educational and promotional functions.[34] The second criterion focused on "the adequacy of an NHRI's attention to popular agency." The aim was to assess the level and quality of NHRI engagement with civil society in terms of helping to empower them through collaboration. The third evaluation criterion focused on the extent to which:

"the legal framework and operations of the NHRIs under study reflect a connection to the 'voices of suffering' ... and is concerned with those whose need for protection is greatest, who are society's most vulnerable elements and who survive at the bottom end of the scale of human freedom from want and deprivation."[35]

Okafur's analysis contains some critical and highly sympathetic findings. It is worth noting that one conclusion is that despite the three commissions having undertaken explicit and significant anti-poverty work, Okafur still concludes that "a significant conceptual and material gap remains between each of these commissions and the voices of suffering that cry out continually for succor in the relevant country."[36] Okafur's framework may risk leaving itself open for rather subjective assessments but it does offer an honest attempt to explore how practical evaluations could be done. Most interestingly, the study distills causal links surrounding NHRI effectiveness that in a simplified manner can be presented in the following way:

Popular legitimization→ Credibility → Augmenting capacity to persuade and pressure governments → NHRI effectiveness[37]

Interestingly, Tazreena Sajjad in an excellent 2009 article on the Afghanistan Independent Human Rights Commission and its role in transitional justice processes draws a similar connection. In Sajjad's article there is a direct link – if not directly causal - between: credibility → legitimacy → accountability → NHRI effectiveness. In this context, independence is identified as a key objective and challenge is securing these elements.[38]

The underlying point is that perception strongly matters for NHRIs when it comes to questions about their effectiveness and factors that enable their work. In her 2009 book, Julie Mertus made the extent to which NHRIs could "remain relevant" one of her major research questions.[39] Just as legitimacy is linked to effectiveness, the perception around relevance is likely to be the same.

### NHRI Complaint-handling – An Opportunity for Effectiveness
The complaint-handling role of NHRIs appears to be one of the most important functions regarding an institution's effectiveness. This is, however, not a straight-forward issue. Firstly, complaint handling is not identified in the Paris Principles as part of the formal mandate of NHRIs. It is merely listed as optional in these Principles. This has given it an uncertain status – and one authoritarian and less committed states can more easily choose to ignore. Secondly, if an NHRI has a mandate for complaint handling there is a risk of over-emphasizing individual complaints, maybe being overwhelmed by these given capacity constraints, and not building a more systematic and strategic approach that the complaints role does allow. Nevertheless, the most recent, comprehensive study is clear that individual complaint-handling powers "are linked to organizational effectiveness."[40] The Peruvian Ombudsman is a particular case in point. They have experienced an eight-

fold increase of their case-load – from 16.478 cases in 1997 to 130.616 cases in 2016 – exactly because they have proven their worth in successfully responding to a large number of complaints and using the complaints to identify issues linked to systemic human rights violations and initiate efforts to address a number of these. As Linos and Pegram argue:

> "In a country where the state has traditionally neglected the institutional sphere of representative democracy, the logic pursued by NHRI officials to empower citizens against the public administration by encouraging them to claim their 'right to complain' has had a powerful cultural impact."[41]

It is noteworthy that Linos and Pegram are not just talking about NHRI effectiveness but the NHRIs actual "cultural impact."

This successful fulfillment of its mandate has a lot to do with the public legitimacy and respect surrounding the Peruvian Ombudsman **(Defensoria del Pueblo)**. Pegram has previously credited the Ombudsman institution with being the main actor in upholding "a stable and enforceable rights framework" against strong political resistance to this since the 1990s.[42]

These achievements also have a lot to do with the decentralized structures and operations of the Peruvian Ombudsmen with its offices spread around the country and with public access clearly being a major priority. The complaint procedure has been made accessible to the citizenry. As Pegram points out the Ombudsman is "viewed as the only credible mediator within the Peruvian state" and he exemplifies this with the following anecdote from a NGO representative:

> "The **Defensoria** always arrives. Even to places where the police will not enter. For instance, during the 2004 conflict in Puno the police requested that the **Defensoria** enter the conflict zone first. In the case of Ilave, the people recognized that the **Defensoria** arrived and tried. All other institutions refused."[43]

There are several factors that lead to such recognition and role in addressing societal conflicts but there is little doubt that the complaint-handling mandate linked to investigatory powers has been a crucial platform to build the Ombudsmen mode of working, establish its legitimacy and secure its effectiveness.

### National Inquiries: A Methodology to Enhance Effectiveness
Meg Brodie has made a convincing argument that conducting national inquiries can be one of the best ways for an NHRI to translate its – sometimes limited - mandate into an effective contribution to domestic human rights change. Her study focuses on the Australian Human Rights Commission's work from the 1990s onwards. It also captures how other NHRIs – particularly in the Asia Pacific region such as the Mongolian Human Rights Commission – has used this methodology and process to further their work.

The Australian Commission developed the national inquiry methodologies as it "sought innovative ways to address systemic human rights violations and fulfil its protection and promotion mandate."[44] It has come to regard the national inquiry as one of the most effective ways for the Commission to fulfil its NHRIs mandate. The national inquiry is much more than conducting a study and publishing a report with critical findings and policy recommendations. It entails a carefully thought through methodological approach and process design. Brodie identifies three elements which characterise the inquiries that NHRIs have conducted effectively. National inquiries are:

1. A public process (focusing both on stakeholder involvement and awareness-raising of the general population)

2. Relational (dialogue is central and seeks input from all stakeholders, including perpetrators and victims of violations)

3. Change-oriented (addressing systemic causes of violations and promoting the internalisation of human rights)[45]

There is an important connection between the complaint-handling role and choosing to conduct a national inquiry. The former role provides an opportunity for an NHRI to identify trends in individual complaints that deserve the instigation of more systematic examination. Brodie identifies the contributions that these inquiries can make for an NHRI. They may be a defining activity for an NHRI that solidifies its role as a human rights actor while it also builds awareness of its capabilities. It enables NHRIs to respond both to evidence of systemic human rights violations as well as set agendas for change. It can allow an NHRI to utilise its full mandate, functions and powers. Brodie further emphasizes that how to go about the national inquiry will depend largely on its subject matter "as different violations will require different approaches."[46] There are, however, four general and easily recognizable aspects to conducting an inquiry: data collection, ongoing stakeholder engagement, public outreach, and presentation of the inquiry's findings. The final product serves at least five purposes that directly speak to enhancing the effectiveness of NHRIs:

> "At the conclusion of the inquiry process, the NHRI will **prepare a report** for presentation to government, tabling in Parliament, and ultimately public release. The report serves five crucial functions: first, it documents evidence of human rights violations; secondly, it provides a platform for the voices of victims to be heard and their stories told; thirdly, it is the mechanism through which the NHRI makes its recommendations for change and redress; fourthly, it is an educative tool informing the general public about the issues and the case for change; and fifthly, it provides advocates with credible data to continue to lobby for change beyond the work of the NHRI."[47]

The national inquiry methodology has proven valuable across all categories of rights and has delivered significant results both in public awareness and legislative terms. A 2007 report on discrimination against same-sex couples published on the basis of a national inquiry launched by the Australian Human Rights Commission in 2006, documented discrimination experienced in areas that included employment, workers' compensation, tax, social security, veterans' entitlements, health care, family law, superannuation, aged care and migration. In an illustration of the methodology's potential effectiveness, the report led to widespread legal reform. As many as 85 federal laws were amended.[48]

The national inquiry methodology can be a comprehensive and time-consuming process depending on the topic and scope of the investigation. It is conceivable that it should mainly be used for issues of strategic significance. However, it is relevant to extract lessons from the methodology, process and product for other reports – such as annual reports or other thematic reports - published by NHRIs. These could also be important contributions both for human rights promotion and protection and for enhancing NHRI effectiveness but it is not clear from the research literature to what extent these reports have been optimized to achieve such aims. Other thematic reports may have potential that is comparable to the national inquiries – on a smaller scale.

As for the NHRI Annual Reports, an assessment of reports from five NHRIs conducted for this research reveals that this genre of reporting is very underdeveloped as a means to generate greater public awareness and attention. The strategic information value of the NHRI Annual Reports is under-valued and hence the potential to leverage them to enhance NHRI effectiveness is under-utilized. There are some good practice features but also missed opportunities here. The Annual Reports may actually represent one way of enhancing NHRI effectiveness – at least according to the theoretical model for effectiveness presented in the next section.

# A THEORETICAL MODEL FOR NHRI EFFECTIVENESS ("FORMAL INSTITUTIONAL SAFEGUARDS")

Based on their extensive research and consultations with scholars and practitioners, Katerina Linos and Thomas Pegram have developed a theoretical model on NHRI effectiveness. The model focuses on formal design features because, as they argue, a large body of literature in administrative law points to the fact organizations with "formal safeguards are often more effective than agencies that lack them."[49] They believe this point is valid also in authoritarian or challenging regime settings and therefore the model may have relevance in the broad array of settings in which NHRIs operate. Hence, the model speaks to country settings where NHRIs are making a significant contribution to improving the human rights situation and in settings where "states built 'sham' NHRIs in response to international pressure, without granting them the powers to carry out their monitoring tasks.[50]

The model closely links independence, accountability and effectiveness which are key themes in the research literature. The model has the advantage that it is closely linked to practical experience. It also has extensive links to the Paris Principles although it places stronger emphasis on complaints and investigatory roles. It can serve as a checklist, could inform development of indicators or could be used as a framework to develop targeted capacity-building efforts to strengthen the functioning and effectiveness of NHRIs. Linos and Pegram link their analysis to recent attempts by the GANHRI Sub-Committee on Accreditation to strengthen guidance on assessing NHRI performance and its own evaluation procedures herein. The model is the most elaborate updated attempt to conceptualize how effectiveness of National Human Rights Institutions could be achieved. It is therefore included here for further consideration for its applicability and relevance. The model which contains 18 "formal institutional safeguards" structured around 4 main categories is included in Table 5:

## TABLE 5: FORMAL INSTITUTIONAL SAFEGUARDS THAT ENHANCES NHRI EFFECTIVENESS

| Independence Safeguards | Rationale |
|---|---|
| Constitutional or Legislative Status | Establishment by constitution or legislation makes NHRI charter harder to amend, and NHRI more stable |
| No Dismissal Without Cause | Dismissal only for good cause helps safeguard NHRI independence |
| Immunity | Immunity from prosecution helps safeguard the independence of NHRI leaders |
| No Government Representation | Government representatives may compromise NHRI autonomy and independence |
| Not Designed by Executive | NHRI officials appointed by the executive may have limited independence |
| **Investigatory Safeguards** | **Rationale** |
| Power to Investigate | When NHRI can investigate on its own initiative, it can have proactive role, in contrast to reactive role of judiciary |
| Can Compel Evidence or Testimony | Strengthens investigation and complaint-handling powers |
| Security Facilities | The explicit power to oversee prisons allows NHRIs to monitor a site of potentially grave human rights violations |
| Can Refer Complaints | Facilitates access of vulnerable groups to courts |
| Individuals' Complaints | Power to hear individual complaints offers individuals direct access to NHRI |
| Enforcement Powers | Enforceable remedies help speed up implementation of NHRI decisions |
| **Promotion Safeguards** | **Rationale** |
| Advise on Legislation | Helps make domestic legislation consistent with human rights standards |
| Annual Report | Helps focus public opinion on country's human rights situation |
| Education and Promotion | Promotes human rights among government agencies, educational institutions, and civil society |
| **Inclusiveness Safeguards** | **Rationale** |
| Broad Rights Mandate | Protects human rights broadly, including social, economic, and cultural rights |
| Harmonize International Human Rights Law | Allows NHRI to help harmonize domestic law with international human rights standards |
| Engage with International Organizations | Helps connect NHRI to international organizations |
| Civil Society Representation | Civil society representatives facilitate contact with diverse societal groups. |

# CONCLUSION

This report documents that the question of effectiveness features strongly in the scholarly literature on National Human Rights Institutions. It has become one of the major themes and there exist several major contributions to the discussions. The best contributions to this field of research are highly relevant for NHRI practitioners and other stakeholders to draw both lessons and inspiration. That this literature is **independent** and **peer-reviewed** gives it additional value compared to related reports or self-assessments prepared by NHRIs or supporting institutions.

There is a critical mass of literature with around 180 to 190 academic publications on NHRIs (journal articles, anthology chapters, monographs and more). However, the analysis of the geographical focus of this literature revealed that Francophone Africa is completely left out of this. The experiences, achievements and challenges of the NHRIs in this part of the world are simply not captured in the story of NHRIs as seen in the world of academic research. This is a gap that should be kept in mind. In general, there are very few NHRIs that can be said to be well-studied. This points to a larger problem. The academic research literature contains many important analytical insights and findings but there is a **representation gap** between which NHRIs have been studied and the broad array of current NHRI practices since the number of NHRIs have significantly expanded and diversified across all regions. There is a gap here but there is no other body of literature that has at least tried in some systematic way and with a degree of analytical coherence to capture the experiences, contributions and effectiveness of NHRIs.

The research literature contains about a handful of studies where scholars have tried to capture the effectiveness or impact of NHRIs over a 30- to 40-year period. It should be noted that the NHRI definition here is slightly broader than what is captured in the Paris Principles but some of the findings reveal interesting results about the positive contributions of NHRIs over the studied time-span. It would be relevant to reflect further on the validity of the data and methods applied because there are some positive messages that can be extracted from these studies.

In terms of assessing effectiveness, there is a solid awareness among scholars that NHRIs operate within a larger political context – often a very complicated one – and these external factors must be considered when trying to analyze and understand the success or failures by NHRIs in becoming effective institutions. This assessment is complicated as was made clear in the reflections presented in this report from various scholars.

This complicated or exposed position of NHRIs, however, also speaks to a larger and interesting role that they do have. NHRIs should not just be seen as agents in human rights work that "do things" in good or not so good ways. The institutions are also "structures" or social and political "spaces" in a larger domestic human rights system. This is a duality that is important to understand. Organizational effectiveness and political/systemic context are closely connected.

The report focused particularly on four elements that seem particularly important to achieve effectiveness. These four elements were:

1. Public Legitimacy

2. The Complaint-handling role

3. National Inquiries (the mandate to investigate and publish reports)

4. Formal Institutional Safeguards (to protect the NHRI against external pressures or threats)

The fourth element was elaborated in a larger theoretical framework developed in 2017 by two of the leading scholars in the field - Katerina Linos and Tom Pegram. This framework could be a focus of further discussion and/or refinement and could possibly be put to practical use. It certainly seems like a valuable update and expansion of the six "effective factors" applicable to human rights institutions that OHCHR elaborated back in 1995, namely: independence; defined jurisdiction and adequate powers; accessibility; cooperation; operational efficiency and accountability." It may be worthwhile comparing whatever frameworks for effectiveness that are in existence and discuss the usefulness of these.

Despite the efforts of the Sub-Committee on Accreditation, it does seem that GANHRI has done relatively little to address the wider discussion on effectiveness of human rights work. There does not seem to have been any investment in strategic information capacity and no developed processes for capturing results and achievements by NHRIs in any systematic way. The question is whether the absence here is sustainable and whether the NHRI community should not find ways of being more active in nurturing a larger, more results-oriented narrative about its members' work, effectiveness and achievements. In her latest book from 2017, the distinguished human rights scholar Kathryn Sikkink calls for actors in the human rights field to develop what she calls "effectiveness politics". By this she means a shift from traditional forms of work such as information politics towards a greater focus on "identifying techniques and campaigns that have been effective at improving human rights."[51] Sikkink´s thinking is in direct response to the vocal critics of human rights work who, as she believes, have had too easy a time in this debate. According to her analysis, they get away with using flawed data. The cost for human rights actors to **not** engage substantially in this debate is unknown but undoubtedly

critical. They need to document and defend their record – as well as be honest about possible shortcomings – to protect the integrity of human rights work in the future.

The NHRI community has not had a sufficient focus on the effectiveness agenda. However, this does not mean an absence of truly distinguished achievements. It could, however, mean that other less sympathetic actors could define or control the narrative of whether NHRIs are worth the investment in them. The question of effectiveness therefore seems a valid agenda for the community of National Human Rights Institutions to focus more on in 2018 – a year that marks the 25th anniversary for the UN General Assembly's adoption of the Paris Principles.

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# NOTES

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