Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman

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TRANSPLANTATION AND ADAPTATION: 
THE EVOLUTION OF THE HUMAN RIGHTS OMBUDSMAN 

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Abstract: The number of human rights ombudsman institutions has increased dramatically over the past three decades. Such institutions are prevalent in Latin America and in Central and Eastern Europe, and are increasingly found in other regions of the world as well. Forces such as democratization, public institution-building, comparative law influences, limited state resources, and international human rights law continue the spread of human rights ombudsman institutions. This Article discusses the mandates and jurisdiction of human rights ombudsman institutions. It argues that all governments should endow human rights ombudsman institutions with as many additional powers as their institutional and legal systems permit to supplement the ombudsman’s core investigatory mandate. These include inspection, litigation, research, and education powers. Further, this Article argues that all human rights ombudsman institutions must institute operating practices to increase their ability to protect and promote human rights.

Introduction

In 1809, Sweden established the justitieombudsman, the predecessor of the modern institution of the ombudsman.1 The Swedish legislature appointed the ombudsman to supervise the conduct of the government administration and the judiciary.2 It had the power not only to prosecute public officials, but also to pursue investigations and make recommendations to the government.3 Until the early 1960s, the ombudsman institution could only be found in a few Scandinavian states.4

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1 See Linda C. Reif, The Ombudsman, Good Governance and the International Human Rights System 4–6 (2004). “Ombudsman” is the Swedish word for “representative.” Id. at 12. Because both women and men hold the office, the pronouns are neutrally used to reflect this fact. See id. at 1 n.2.

2 Id. at 5–6.

3 See id. at 4.

4 See id. at 1.
Nevertheless, early in its history, the ombudsman’s mandates diverged. 5 While in Sweden and Finland the ombudsman had both prosecutorial powers and jurisdiction over the judiciary, the Danish ombudsman had neither of these functions. 6 It was the Danish model that became popular in other jurisdictions around the world, particularly in Commonwealth nations and some Western European states. 7 The core function of this popular Scandinavian ombudsman model—the so-called “classical” ombudsman—is to investigate administrative conduct impartially based either on a complaint or the ombudsman’s own motion, to make recommendations, to rectify any illegal or unfair conduct uncovered, and to issue annual and special reports. 8 The classical ombudsman is an institution that uses “soft powers” of persuasion and cooperation to control conduct rather than coercive or adjudicative means. 9

Some schools of thought regarding common law and administrative law refer to the ombudsman as a non-judicial alternative for overseeing public administration. 10 Similarly, comparative law scholars occasionally reference the ombudsman in discussions of comparative administrative law, essentially using it as an example of a public sector institution that has been successfully transplanted in different legal systems around the world. 11 Despite the changing face of ombudsman

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5 See id. at 25.
6 See Reif, supra note 1, at 2, 138.
7 See id. at 6.
8 See id. at 2–4. Even within the family of classical ombudsmen, there are variations between institutions. See id. at 3. For example, some ombudsmen do not have own-motion powers, some can inspect facilities such as prisons where persons are involuntarily detained, and other ombudsmen are appointed by the executive rather than the legislative branch. See id. at 3–4, 406.
institutions around the globe, the relevant legal literature primarily discusses only the Scandinavian or classical ombudsman model.\textsuperscript{12}

Since the 1970s, governments around the world, on both national and sub-national levels, have established hybrid versions of the ombudsman institution by giving one institution multiple mandates.\textsuperscript{13} These additional mandates include protecting human rights, fighting corruption, ensuring ethical conduct by elected public officials, and protecting the environment.\textsuperscript{14} Even classical ombudsmen are being given “second hats” of differing scope with respect to freedom of information, protecting privacy, child protection, and health system oversight.\textsuperscript{15} This Article specifically addresses the human rights ombudsman phenomenon—in other words, ombudsman-type institutions that are given express mandates to protect and promote human rights.\textsuperscript{16}

By 2003, about half of the approximately 110 national-level ombudsman institutions worldwide had human rights mandates.\textsuperscript{17} Many ombudsman institutions established since that time have also been given human rights-related duties, and classical ombudsman institu-

\textsuperscript{12} See European Ombudsman-Institutions, supra note 10, at 59–62; Reif, supra note 1, at 2–4; Barbara von Tigerstrom, The Role of the Ombudsman in Protecting Economic, Social and Cultural Rights, in 2 The International Ombudsman Yearbook, supra note 9, at 3, 4–8.

\textsuperscript{13} See Reif, supra note 1, at 8.

\textsuperscript{14} See e.g., id. at 7–11. Some Asian-Pacific and African states have given their ombudsman institutions anti-corruption or public official ethics enforcement mandates. See id. at 10 (listing Vanuatu, Papua New Guinea, Philippines, Macao (China), Taiwan, Indonesia, East Timor, South Africa, Namibia, Uganda, Mauritius, Lesotho, Seychelles, and Rwanda as examples). A few states have given their institutions numerous mandates. See id. at 9. For example, the ombudsmen in Namibia and Lesotho are responsible for human rights protection, anti-corruption, and environmental protection. See id. at 8–11.


\textsuperscript{16} See Reif, supra note 1, at 87–88. Human rights ombudsman institutions are also often given powers beyond those typically given to classical ombudsmen such as the powers to launch or intervene in constitutional court actions, prosecute public officials, and engage in human rights research and education. See id. at 8, 88, 193.

\textsuperscript{17} See id. at 11, 393. On a sub-national level, there are numerous human rights ombudsman institutions, such as those in Spain and Argentina. See id. at 11.
tions are increasingly being transformed through the conferral of constitutional or legislative mandates to protect human rights.\textsuperscript{18}

This Article examines the proliferation of human rights ombudsman institutions over the past three decades and argues that their numbers will continue to grow relative to their classical predecessors. The forces responsible for the growth of human rights ombudsmen include democratization, public institution building, comparative law influences, limited state resources, international and regional movements to establish national human rights institutions (NHRIs), and the recent adoption of human rights treaties, along with other initiatives that rely on NHRIs, for domestic implementation of international human rights obligations.\textsuperscript{19} Although some mixed jurisdictions and a few common law states have adopted the human rights ombudsman model, they are primarily found in civil law jurisdictions.\textsuperscript{20}

Additionally, this Article reviews the core powers of human rights ombudsman institutions in various jurisdictions. Although a human rights ombudsman endowed with limited, classical powers may be effective, governments should endow their human rights ombudsmen with as many additional functions and powers as their institutional and legal systems permit to support the institution’s human rights mandate. Finally, all human rights ombudsmen should engage in appropriate institutional practices to maximize their ability to protect and promote human rights.

\textsuperscript{18} See id. at 393.


\textsuperscript{20} See Reif, supra note 1, at 8–9. These forces may also cause an increase in the number of human rights ombudsman institutions in common law jurisdictions. See id. at 8–9. See generally Common Law Systems and Mixed Systems with a Common Law Tradition, supra note 19 (providing a list of common law and mixed systems worldwide); Directory 2008, supra note 19 (listing contact information for ombudsman offices internationally).
I. THE HISTORICAL DEVELOPMENT AND CURRENT USE OF HUMAN RIGHTS OMBUDSMAN INSTITUTIONS

A. The Evolution of the Human Rights Ombudsman: The Classical Ombudsman and Human Rights Commissions

Since the 1960s, as government bureaucracies have grown in size, nations have steadily perceived the ombudsman as a useful mechanism for controlling administrative misconduct.\(^{21}\) Specifically, governments began adopting Scandinavia’s classical ombudsman model.\(^{22}\) Commonwealth countries in particular, many of which obtained their independence following World War II, followed this trend.\(^{23}\) Western European nations, among others, caught up with this trend a few years later and began establishing classical ombudsman institutions in the 1970s.\(^{24}\)

Born from the rubble of World War II, human rights commissions appeared as non-judicial mechanisms for protecting individuals from governments or private actors violating their rights.\(^{25}\) At first, only a few human rights commissions existed, primarily in European and Commonwealth states.\(^{26}\) Since the 1990s, however, many more have been created.\(^{27}\) Human rights commissions are multiple-member bodies with numerous human rights protection and promotion functions, including human rights research and education, advocating for the implementation of human rights treaties, and monitoring the state’s compliance with its international and domestic human rights obligations.\(^{28}\) While some commissions have a limited advisory or research role, many have investigatory powers and may recommend or conciliate resolutions to complaints; some may even refer complaints to tribunals or to courts for binding resolution, intervene in court actions, act as amici curiae, and

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\(^{21}\) See Reif, supra note 1, at 6–7; Wade & Forsyth, supra note 10, at 73–75.

\(^{22}\) See Reif, supra note 1, at 2.

\(^{23}\) See id. at 6–7. In 1962, New Zealand became the first Commonwealth state to establish a classical ombudsman, followed by countries in Africa, the Caribbean, Asia and the Pacific region, the United Kingdom, and most Canadian provinces. See id. at 6 & n.30 (listing countries that established a classical ombudsman chronologically by date).

\(^{24}\) See id. at 6–7. For example, France’s Médiateur was copied by Francophone African states, Italian regions and provinces, Austria, Netherlands, Ireland, Belgium, a few U.S. states, most Canadian provinces and territories, and many Commonwealth Caribbean nations. See id. at 6 & n.30, 7 & n.31, 11–12, 86–87.

\(^{25}\) See id. at 6.

\(^{26}\) See id. at 8–9, 83 n.8.

\(^{27}\) Reif, supra note 1, at 83–85.

\(^{28}\) Id.
By the 1970s and 1980s, as the public consciousness of the human rights abuses being committed by authoritarian or military dictatorships expanded, the number of international human rights laws increased. At the same time, democratization flourished, first in Southern Europe, then in Latin America as well as in Central and Eastern Europe.

In these countries, public sector reform was on the agenda as framers built—or in some cases rebuilt—constitutional, legal, and institutional frameworks. Faced with the challenge of both ensuring administrative justice and guarding against further human rights violations, many nations considered establishing horizontal accountability mechanisms in their new governments. To build this public architecture, these new governments could draw on the existing models of ombudsman institutions and human rights commissions. Nevertheless, rather than establishing separate accountability mechanisms, many of these nations created hybrid institutions reflecting each of the two institutional models. Although the contours of each human rights om-

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31 See Samuel P. Huntington, The Third Wave: Democratization in the Late Twentieth Century 21–26 (1991). This development has been uneven and, as a result, some nations have experienced setbacks. See John Peeler, Building Democracy in Latin America 26–28, 182–85 (3d ed. 2009).


34 See Reif, supra note 1, at 393–95.

35 See id. at 8–9. While the generic term “human rights ombudsman” will be used, the actual titles given to these hybrids vary, including “commissioner for civil rights protection,” “defender of the people,” “attorney for the defense of human rights,” and “ombudsman.” See id. at 12. For example, Poland uses the “commissioner for civil rights protection” designation. Id. “Defender of the people” is used in Spain and parts of Latin Amer-
budsman vary, nearly all are single office-holders and the institution always has the power to investigate public complaints, make recommendations, and report its findings.\(^{36}\)

The distinguishing characteristics of these institutions are their specific mandates with respect to human rights.\(^{37}\) Many mix administrative justice duties with responsibilities for protecting and promoting human rights; nevertheless, there can be considerable differences in emphasis depending on an institution’s particular constitutional or legislative mandate and its unique political and economic context.\(^{38}\) Some single office-holder institutions have mandates similar to those of a human rights commission, which focuses on the protection and promotion of human rights and lacks an express ability to oversee administrative justice.\(^{39}\) While a few institutions have only investigation, reporting, and recommendation functions, many have stronger powers like the right to inspect closed facilities, to bring abstract or concrete review actions before constitutional courts, to participate in administrative court proceedings, or to prosecute or recommend the prosecution of public officials.\(^{40}\) Furthermore, some human rights ombudsman institutions have jurisdiction over aspects of private sector conduct in addition to public sector jurisdiction.\(^{41}\)

As they transitioned to democracy in the mid-1970s, Portugal and Spain became the first countries to establish human rights ombudsmen.\(^{42}\) In 1975, Portugal established the Provedor de Justiça.\(^{43}\) Spain enshrined its Defensor del Pueblo in the country’s 1978 Constitution as well as in a legislative enactment.\(^{44}\) The Spanish institution was tasked with defending constitutional human rights guarantees by supervising government administration; additional legislation added an ombudsman-

\(^{36}\) See Pohjolainen, supra note 29, at 18–19; von Tigerstrom, supra note 12, at 4–8.

\(^{37}\) von Tigerstrom, supra note 12, at 7–8.

\(^{38}\) See id.

\(^{39}\) See Pohjolainen, supra note 29, at 18–19. In practice, however, some of these human rights ombudsmen may nevertheless investigate administrative complaints. See id.

\(^{40}\) See infra Part III.B.

\(^{41}\) See Pohjolainen, supra note 29, at 17.


\(^{43}\) See Reif, supra note 1, at 8, 141–42. The institution was elevated to a constitutional office in 1976. See id. at 141.

\(^{44}\) Id. at 8.
like element to the mix. Beyond the powers to investigate, recommend, and report, both the Portuguese and Spanish institutions could bring actions before their respective constitutional courts.

In Sweden, legislation passed in 1986 established an express, albeit more subtle, duty for the ombudsman to protect human rights: “The Ombudsmen are to ensure in particular . . . that the fundamental rights and freedoms of citizens are not encroached upon in public administration.”

After the collapse of the Soviet Union and the Eastern Bloc and their turn toward democracy in the late 1980s, similar desires both to improve bureaucratic performance and halt human rights abuses by the government led many Central and Eastern European governments to establish human rights ombudsman institutions. Hybrid institutions also began to appear in some African, Asian, Caribbean, Pacific, and Western European nations.

B. Mapping the Human Rights Ombudsman and Classical Ombudsman Institutions

Today, the human rights ombudsman is an institution found in many nations around the world. Most Latin American countries have a

46 See European Ombudsman-Institutions, supra note 10, at 354–55; Reif, supra note 1, at 147–49.
48 See Reif, supra note 1, at 8, 155–60.
49 See id. at 125, 171, 215.

For example, Argentina, Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, and Venezuela all have human rights ombudsmen.\footnote{See Directories of Ombudsman Offices: Ombudsman of Latin America, INTER-AM. INST. OF HUM. RTS., http://www.iidh.ed.cr/comunidades/ombudsnet/english/f_O_LA.htm (last visited May 8, 2011). In Latin America, an ombudsman is commonly called Defensor del Pueblo (“Defender of the People”), but may also be referred to as Defensor de los Habitantes (“Defender of the Inhabitants”), Comisionado de los Derechos Humanos (“Commissioner of Human Rights”), or Procurador de los Derechos Humanos (“Attorney for Human Rights”). See id.; see also Leo Valladares Lanza, The Challenges Facing the Ombudsman in Latin America, in 2 THE INTERNATIONAL OMBUDSMAN YEARBOOK, supra note 9, at 159, 159–60.}

In the broader Caribbean region, the ombudsmen of Belize, Guyana, Jamaica, and Haiti all have human rights mandates to differing degrees.\footnote{See id. at 157–60; see also EUROPEAN OMBUDSMAN-INSTITUTIONS, supra note 10, at 503. Countries with human rights ombudsman institutions include Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovak Republic, Slovenia, Ukraine, and Uzbekistan. See Reif, supra note 1, at 157–60; see also EUROPEAN OMBUDSMAN-INSTITUTIONS, supra note 10, at 503. See generally Directory 2008, supra note 19 (listing contact information for ombudsman offices internationally). In Estonia, the Legal Chancellor is responsible for protecting human rights. See EUROPEAN OMBUDSMAN-INSTITUTIONS, supra note 10, at 6, 51.}

Additionally, human rights ombudsmen or commissioners are found widely throughout Central and Eastern Europe.\footnote{See European Ombudsman-Institutions, supra note 10, at 502. For example, institutions in Azerbaijan, Georgia, Kazakhstan, Ukraine, and Uzbekistan use only human rights standards in investigations. See id. The institutions in Argentina, Peru, Costa Rica,
regions have taken on human rights-related functions either at their inception or through legal reform. France’s 2008 constitutional reforms provided for a new human rights state institution, the Défenseur des Droits. In Australia, the ombudsman of the State of Victoria handles complaints with respect to alleged breaches of the State’s Charter of Human Rights and Responsibilities by public authorities. Further, Denmark and Luxembourg have given their classical ombudsman institutions human rights monitoring responsibilities under the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

African nations with human rights ombudsman institutions include Angola, Ethiopia, Gambia, Lesotho, Malawi, Namibia, and Sey-
Human rights ombudsmen are far less common in Asia and the Pacific regions, but East Timor, Fiji, and Papua New Guinea are examples of states that have institutions with human rights mandates of varying scope.60

In sum, while human rights ombudsmen are found in most global regions, they are predominantly established in Latin America and in Central and Eastern Europe.61 While many countries choose to have one unified human rights overseer, a human rights ombudsman sometimes exists alongside another, general-purpose human rights institution, often a research or advisory human rights commission.62 Most of the jurisdictions with human rights ombudsman institutions are civil law systems, although the ombudsman is present in some common law or mixed legal systems.63 Furthermore, those civil law countries with a constitutional court may have a more powerful human rights ombudsman.64 The quantity and quality of powers given to


60 See Reif, supra note 1, at 245, 249.

61 See id. at 9.


63 See generally Common Law Systems and Mixed Systems with a Common Law Tradition, supra note 19 (providing a list of common law and mixed systems worldwide); Directory 2008, supra note 19 (listing contact information for ombudsman offices internationally). Examples of states with common law systems using human rights ombudsmen include Jamaica, Victoria (Australia), and Belize. See Common Law Systems and Mixed Systems with a Common Law Tradition, supra note 19; Directory 2008, supra note 19, at 7–9, 12, 34. Mixed systems with human rights ombudsmen are found in Malawi and Papua New Guinea. See Common Law Systems and Mixed Systems with a Common Law Tradition, supra note 19; Directory 2008, supra note 19, at 37, 51. Lesotho, Gambia, Seychelles, and Namibia have mixed systems with hybrid institutions. See Common Law Systems and Mixed Systems with a Common Law Tradition, supra note 19; Directory 2008, supra note 19, at 22, 35, 46, 54; see also Reif, supra note 1, at 9, 11.

64 See Reif, supra note 1, at 252. Many civil law states with constitutional courts have established human rights ombudsmen who are typically authorized to launch actions in constitutional courts. See id. at 9, 11. See generally Common Law Systems and Mixed Systems with a Common Law Tradition, supra note 19 (providing a list of common law and mixed systems worldwide); Constitutional Courts (Links), Council Eur. Venice Commission, http://www.venice.coe.int/site/dynamics/N_court_links Ef.asp (last visited May 8, 2011) (providing
human rights ombudsmen in countries without constitutional courts varies.65

On the contrary, the classical ombudsman is now found predominantly in North America, Commonwealth Caribbean nations and overseas territories, parts of Western Europe, and in a number of African, Asian, and Pacific states.66 Some of the jurisdictions with classical ombudsmen, particularly Commonwealth nations, also have separate human rights commissions.67 Thus, classical ombudsman institutions are found across common law, civil law, and mixed legal systems.68

The concept of a modern human rights ombudsman is not alien to or irreconcilable with the classical ombudsman model. A testament to the compatibility of these two concepts is the substantial number of human rights ombudsman institutions that have been established and maintained since the 1970s using the ombudsman model.69 At its core, the ombudsman is an institution designed to monitor illegality, unfairness, and injustice in public administration.70 In this sense, breaches of human rights laws, whether domestic or international obligations, have
always been part of the ombudsman’s mission. It has long been recognized that even the classical ombudsman plays a role both in human rights protection and in the implementation of a state’s domestic and international human rights obligations. Thus, one way of looking at the human rights ombudsman is as a workable adaptation of the classical ombudsman concept.

II. FORCES COMPELLING THE GROWTH OF THE HUMAN RIGHTS
OMBUDSMAN PHENOMENON

A variety of forces, both legal and non-legal, have compelled the growth of human rights ombudsman institutions around the world, both in absolute terms and relative to the number of classical ombudsman institutions. These forces include democratization and public institution-building initiatives; comparative law influences in particular regions or sub-regions; the need to conserve government resources; international initiatives to establish NHRIs; and pressure resulting from regional standards, U.N. standards, and treaty initiatives to establish domestic institutions for human rights protection. It is likely that these forces will continue to influence governments to establish some form of human rights ombudsman. These same forces have led other states to establish human rights commissions. While common law jurisdictions tended to create separate, classical ombudsman institutions and human rights commissions, these forces may also induce common law states to establish human rights ombudsman institutions.

A. Democratization, Public Institution-Building, and the Influence of Comparative Law

Beginning in the 1970s, as a number of European and Latin American countries transitioned from authoritarian regimes to democ-


72 See Reif, supra note 1, at 6.

73 See Reif, supra note 50, at 275.

74 See COMMONWEALTH SECRETARIAT, supra note 10, at 18, 94.

75 See id. at 18–19; EUROPEAN OMBUDSMAN-INSTITUTIONS, supra note 10, at 502. See generally COMMON LAW SYSTEMS AND MIXED SYSTEMS WITH A COMMON LAW TRADITION, supra note 19 (providing a list of common law and mixed systems worldwide); DIRECTORY 2008, supra note 19 (listing contact information for ombudsman offices internationally).
racies, they sought to rebuild their public institutions with checks to avoid the human rights abuses and bureaucratic ineptitude of the prior regimes. These countries saw methods of horizontal accountability in public institutions, including human rights commissions and the ombudsman, as important models for their own use.

Thomas Pegram has explored the diffusion of NHRI
d including the human rights ombudsman, around the world. He argues that the mechanisms of diffusion by acculturation and persuasion have led to the spread of NHRI
d and that the acculturation process has resulted in a “general conformity, or isomorphism, across models within regional referent groups.” With democratic transitions occurring throughout some regions in a relatively short period of time and the associated need for new institutional models, the acculturation process can help to explain the spread of the human rights ombudsman institution throughout Latin America and in Central and Eastern Europe. As argued below, however, U.N.-level pressure to create human rights ombudsman institutions was weak in the early 1990s, so the acculturation process would likely have been spurred on in that period predominantly by regional organizational and institutional influences.

Pegram also concludes that the human rights ombudsman and human rights commission models are found most often in countries with hybrid or “partly free” democratic regimes, while “the classical ombudsman continues to predominate in ‘free’ regimes, increasingly operating in conjunction with a human rights commission model.” This may be due in part to the novelty and related allure of the human rights ombudsman model in the late 1980s and early 1990s, which coincides with the period of democratic transition for several countries in Latin America and in Central and Eastern Europe.

More recently, however, an increasing number of “fully free,” democratic nations have adopted the human rights ombudsman model,

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76 See Oosting, supra note 70, at 4.
77 See Commonwealth Secretariat, supra note 10, at 18.
79 Id. at 749.
80 See id. at 760.
81 See Reif, supra note 1, at 258–87 (discussing U.N. involvement in post-conflict peacebuilding processes that established human rights ombudsman institutions).
82 Pegram, supra note 78, at 755.
83 See id. at 748–49.
mainly in Western and Southern Europe. This development may be traceable to the diffusion process. Moreover, it is likely that regional influences have played an important role. The growth of human rights ombudsman institutions in these states—including those that have transitioned from a classical to a human rights ombudsman model—along with the presence of classical, or anti-corruption, ombudsman institutions in states at varying points along the political spectrum, will likely increase the proportion of human rights ombudsman institutions in the free or partly free sector of the political spectrum. This tendency will become more pronounced if the classical ombudsman institutions in free states with monitoring responsibilities pursuant to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) are reclassified as human rights ombudsman institutions.

Comparative law influences are also instructive as a distinct force in the human rights ombudsman evolution. In particular, the legal transplant and adaptation concepts are useful in understanding the institution’s development. The diffusion by acculturation process posed by Pegram collapses comparative law aspects of the process into the broader theory of diffusion. As noted above, most countries with human rights ombudsman institutions—and all countries with such institutions in Europe and Latin America—have civil law systems, so the transplantation of the human rights ombudsman has been predominantly into other civil law systems. As discussed below, in many cases lawyer elites, government officials, and civil society groups regard the

84 See Reif, supra note 1, at 83. A majority of these states are European Union members. See id. at 137, 141, 368.
85 See id. at 84; Pegram, supra note 78, at 755.
86 See Reif, supra note 1, at 84.
88 See Pegram, supra note 78, at 747–50.
89 See Reif, supra note 1, at 2, 8–9.
ombudsman concept, whether in its original or adapted form, as a prestigious or superior model.  

Adaptation or hybridization, the next step in the evolution of the ombudsman, first occurred on the Iberian Peninsula. Reacting to the immediate political past, the newly democratic governments of Spain and Portugal modified the classic ombudsman model by adding a mandate that the ombudsman protect human rights. In other words, they adapted the legal transplant of the Scandinavian model by adding an express duty to protect human rights. As Buades stated with respect to the establishment of Spain’s Defensor del Pueblo,

[W]hen shaping the figure of the Ombudsman, Spanish constitutionalists had the characteristics of the Scandinavian model very much in mind in terms of independence, parliamentary links and control of the administration, in order to avoid abuses and errors in the omnipresent public administration . . . . With the intention of consolidating and strengthening the recently conquered freedoms, a further step was taken by entrusting the Ombudsman with the task of defending fundamental rights . . . .

The Spanish legal heritage of Latin America made the Spanish Defensor del Pueblo an attractive legal transplant for Latin American countries transitioning to democracy. Spain and Latin America have civil law

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90 See Graziadei, supra note 87, at 457–58. In both Latin America and Europe, many of the legal experts and drafters involved in the process appear to have been familiar with the Scandinavian ombudsman concept and the Iberian hybrid human rights ombudsman. See Reif, supra note 1, at 8–9, 25. Where post-conflict peace-building agreements establish a human rights ombudsman, the particular ombudsman model chosen for the transitioning jurisdiction will likely have been influenced by the preferences of the international organization personnel of diverse nationalities involved in the drafting process. See id. at 284–87.

91 See Reif, supra note 1, at 8.

92 See id. at 141, 146.

93 See id.


95 See Reif, supra note 1, at 188. Brazil, however, has a Portuguese legal heritage. See id. at 191 (indicating that Brazil has ombudsman institutions in some states and municipalities); Jan Kleinheisterkamp, Development of Comparative Law in Latin America, in THE OXFORD HANDBOOK OF COMPARATIVE LAW, supra note 11, at 261, 266–67, 276–78; see also Aspásia Camargo, Federalism and National Identity, in BRAZIL: A CENTURY OF CHANGE 216, 247–49 (Ignacy Sachs et al. eds., 2009) (noting that Brazil’s 1988 Constitution “recovered very old traditions of Portuguese municipalism” which led to “the strengthening of the power and legitimacy of local governments”).
legal systems. The 1978 Constitution of Spain established a constitutional court outside the judicial branch for the adjudication of constitutional matters—including human rights—and adopted the *amparo* action, whereby persons can use litigation to protect their human rights. Most Latin American nations also have constitutional courts and the *amparo* or equivalent actions. Accordingly, the Spanish version of the human rights ombudsman, and its integral relationship with a constitutional court and the *amparo* action, was seen to be a natural fit for many Latin American states.

Guatemala was the first Latin American state to establish a human rights accountability institution, with its *Procurador de los Derechos Humanos*. One early *Procurador* who helped formulate Guatemala’s constitution in 1985 described both the Swedish ombudsman and Spanish *Defensor del Pueblo* as the institutions that inspired the Guatemalan *Procurador’s* legal framework. Following Guatemala’s lead, in the early 1990s a number of other Latin American states created *Defensor del Pueblo*, *Procurador*, and human rights commissioner institutions with varying emphasis on human rights protection and promotion. For example, Argentina and Peru followed the Spanish *Defensor del Pueblo*

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96 See M.C. Mirow, *Latin American Law: A History of Private Law and Institutions in Spanish America* 15, 45–47, 51–52, 104 (2004). Indeed, Spanish law was applied in the latter territories during the colonial period until local laws were developed, and Spanish law and doctrine remained influential in Latin America. See id. at 15.

97 See *European Ombudsman-Institutions*, supra note 10, at 401. Curiously, while the *amparo* action originated in nineteenth-century Latin America, Spain did not adopt the action until the twentieth century. See Brewer-Carías, supra note 65, at 1, 4–6, 73–76.

98 See *Brewer-Carías*, supra note 65, at 163; Mirow, supra note 96, at 178, 180.

99 See, e.g., Lorena González Volio, *The Institution of the Ombudsman: The Latin American Experience*, 37 Revista IIDH 219, 223 (2003). Mexico, however, has a civil law system and the *amparo* action, but does not have a constitutional court and has adopted the human rights commission model. See Mirow, supra note 96, at 173, 178.


101 See de León Carpio, supra note 100, at 115; see also *Antecedentes*, PROCURADURÍA DE LOS DERECHOS HUMANOS, 1 (July 27, 2010), http://www pduh.org.gt/index.php?option=com_content&view=category&layout=blog&id=25&Itemid=9 (follow hyperlink to pdf document under “Antecedentes” heading). Members of the Guatemalan College of Lawyers and Notaries met informally in the lead-up to the elections for the constitutional assembly and came up with ideas that included the *Procurador* model; in turn, some of these legal experts were elected to the constitutional assembly and lobbied successfully for the inclusion of the *Procurador* institution in Guatemala’s new constitution. See de León Carpio, supra note 100, at 113–14.

102 See Reif, supra note 1, at 172, 187–91.

In the late 1980s, as communist regimes imploded, Central and Eastern European nations began the process of nation-building.\footnote{See Iván Bizjak, The Role and Experience of an Ombudsman in a New Democracy, in 2 THE INTERNATIONAL OMBUDSMAN YEARBOOK, supra note 9, at 57, 57–58.} Western European, U.S., and indigenous models all influenced the shape and substance of their new constitutions and public institutions.\footnote{See Rett R. Ludwikowski, Constitutional Culture of the New East-Central European Democracies, 29 GA. J. INT’L & COMP. L. 1, 10 (2000); Rett R. Ludwikowski, “Mixed” Constitutions—Product of an East-Central European Constitutional Melting Pot, 16 B.U. INT’L L.J. 1, 50–63 (1998); Victoria Schwartz, The Influences of the West on the 1993 Russian Constitution, 32 HASTINGS INT’L & COMP. L. REV. 101, 110–13 (2009).} Many adopted variants of the human rights ombudsman, albeit with differing powers and names. Poland was the first nation in the region to establish a human rights ombudsman.\footnote{See Reif, supra note 1, at 160.} Polish law scholars and organized civil society first discussed creating an ombudsman institution in the early 1980s.\footnote{See Agnieszka Klich, Human Rights in Poland: The Role of the Constitutional Tribunal and the Commissioner for Citizens’ Rights, 1996 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 33, 38; Ewa Letowska, The Polish Ombudsman: (The Commissioner for the Protection of Civil Rights), 39 INT’L & COMP. L.Q. 206, 206 (1990); see also Mark F. Brzezinski, The Emergence of Judicial Review in Eastern Europe: The Case of Poland, 41 AM. J. COMP. L. 153, 173–76 (1993) (discussing the establishment of Poland’s Constitutional Tribunal between 1981 and 1985).} Poland’s communist regime actually created the country’s Commissioner for Civil Rights Protection in 1987 prior to its collapse; it was “apparently conjured up by high state officials to prove that reforms undertaken by the communist government were not merely empty words.”\footnote{Klich, supra note 107, at 38.} The Commissioner was established to safeguard citizens’ rights and freedoms found in the constitution and other normative acts infringed upon by public authorities.\footnote{See THE CONSTITUTION OF THE REPUBLIC OF POLAND, Apr. 2, 1997, ch. II, art. 80; id. ch. IX, art. 208; see also EUROPEAN OMBUDSMAN-INSTITUTIONS, supra note 10, at 345–47; Marek Zubik, Poland’s Commissioner for Civil Rights Protection: Two Decades of Human and Civil Rights Protection, in 10 THE INTERNATIONAL OMBUDSMAN YEARBOOK 182, 183–84 (Linda C. Reif ed., 2006).}
ally, it had the power to bring actions before Poland’s constitutional court and its administrative courts.\textsuperscript{110} The first Polish Commissioner stated, “Poland’s ombudsman’s office is modeled after the Scandinavian version which was vigorously promoted by Polish scholars acquainted with West European institutions. Communist officials, largely ignorant of the nature of this institution, agreed to establish [the] ombudsman without realizing the potential consequences.”\textsuperscript{111} One publicist stated that the Polish institution was also modeled on the classical ombudsman offices in France and the United Kingdom.\textsuperscript{112}

In Hungary, a legislative proposal for an ombudsman was first put forth in 1988.\textsuperscript{113} It appears that the Swedish and Polish models were influential in the subsequent development of the Hungarian commissioners for human rights.\textsuperscript{114} The Slovenian Human Rights Ombudsman legislation was passed in late 1993 and “modelled the duties and authorities of the ombudsman on a classical Scandinavian type of ombudsman, combining it with some provisions of the legislation in those European countries, which recently established such institutions (e.g. Netherlands, Spain).”\textsuperscript{115} The drafters of federal constitutional law on the commissioner for human rights in Russia also looked to the ombudsman institutions of Sweden and Great Britain.\textsuperscript{116} The Russians were particularly influenced by ombudsman institutions in countries that had experienced or were experiencing a political transition; therefore “[s]pecial attention was paid to the experience of Poland, Slovenia, and post-Franco Spain,” although the Russian model was adapted to fit its own particular environment.\textsuperscript{117}

Thus, Central and Eastern European nations looked not only to classical ombudsman institutions for inspiration but also to hybrid mod-

\textsuperscript{110} See \textit{European Ombudsman-Institutions}, supra note 10, at 345–47, 521.


\textsuperscript{114} See \textit{id.} at 167–69.

\textsuperscript{115} Ivan Bizjak, \textit{The Human Rights Ombudsman of Slovenia}, in \textit{HUMAN RIGHTS COMMISSIONS AND OMBUDSMAN OFFICES: NATIONAL EXPERIENCES THROUGHOUT THE WORLD}, supra note 47, at 373, 373.


els like the Spanish Defensor del Pueblo and the Polish Commissioner for Civil Rights Protection.118 Unlike the Swedish ombudsman, both the Defensor del Pueblo and the Polish Commissioner had the power to bring human rights-related actions in a constitutional court, a power subsequently included in other human rights ombudsman institutional structures in Eastern and Central Europe.119 On the other hand, Scandinavian models—in particular the Swedish variant—along with the Defensor del Pueblo, were more influential in Latin America.120 In both regions, however, adopting a human rights ombudsman model was not the end of the story: the structures of subsequent institutions were also shaped by other early intra-regional institutions in jurisdictions with political and legal environments similar to those of the copying state.121

Tracing the influence of comparative law on human rights ombudsmen created in other parts of the world is more difficult. Colonial legal histories likely play a role. For example, East Timor’s past colonial legal ties to the Portuguese Provedor de Justiça model helped shape its own human rights ombudsman, which was enshrined in the nation’s 2002 independence constitution and was given an additional corruption-fighting role.122 An institution’s date of establishment, any relationship with a post-conflict peace agreement or transitional independence plan, and local conditions also influence the shape of these institutions.123

118 See id. However, it is difficult to demonstrate any substantial influence exerted by the ombudsmen in France and Great Britain because these institutions did not have express human rights mandates.

119 See, e.g., EUROPEAN OMBUDSMAN-INSTITUTIONS, supra note 10, at 517–21. While the Swedish ombudsman had an express human rights mandate by 1987 and had the power to prosecute public officials, none of the Scandinavian nations have separate constitutional courts. See id. at 412–16, 460, 515–21. Additionally, none of the Scandinavian ombudsman institutions have mandates to bring court actions to determine the compatibility of legislation or treaties with constitutional human rights provisions. See id.

120 See REIF, supra note 1, at 187–88.

121 See Linda C. Reif, Introduction to THE INTERNATIONAL OMBUDSMAN ANTHOLOGY: SELECTED WRITINGS FROM THE INTERNATIONAL OMBUDSMAN INSTITUTE, supra note 10, at xxiii–xxvi; see also Elcock, supra note 112, at 362.


123 See Reif, supra note 121, at xxiii–xxvi. In particular, African and Asian governments are more likely to give an anti-corruption mandate to an ombudsman institution. See REIF, supra note 1, at 9–10, 215.
In Africa, Uganda and Namibia established the first human rights ombudsman institutions.\textsuperscript{124} Uganda’s Inspector-General of Government, as established in 1987, had human rights protection and anti-corruption mandates but only classical ombudsman-type powers.\textsuperscript{125} Namibia’s ombudsman—established in the 1990 Constitution after the U.N.-assisted transition to independence from South African control—has multiple mandates, including administrative oversight and human rights, anti-corruption, and environmental protection.\textsuperscript{126} The Namibian ombudsman was also given stronger powers to refer matters to other public officials for prosecution, bring court proceedings to halt government action and challenge the validity of laws, and provide legal assistance to persons engaged in constitutional human rights litigation.\textsuperscript{127} For these first human rights ombudsman institutions in Africa, no colonial links influenced the particular hybrid model they chose, and few hybrids were found elsewhere in the world at the time.\textsuperscript{128}

B. \textit{Limited State Resources}

Industrialized, transitional, and developing countries engage in government budget-cutting exercises for various reasons. Localized or widespread economic crises occur on a regular basis.\textsuperscript{129} Some governments are ideologically predisposed to limit government action and spending or wish to reign in the spending of a prior administration.\textsuperscript{130} Consequently, giving multiple mandates to a new institution, or adding additional oversight mandates to an existing institution, are attractive alternatives for governments seeking to cut public expenditures. Low levels of state resources, and sometimes a desire to devote minimal resources to the operation of good governance and human rights institutions, are factors leading to the establishment of the multiple mandate,

\textsuperscript{124} See Reif, \textit{supra} note 1, at 221–23.
\textsuperscript{125} See id. at 232. The human rights mandate of Uganda’s Inspector General was transferred to a human rights commission in 1995. Id.
\textsuperscript{126} See id. at 234–37.
\textsuperscript{127} See id. at 235–36.
\textsuperscript{128} See id. at 224, 231, 234 (noting the hybrid models of Namibia and Uganda and the political history underlying the founding of these institutions).
\textsuperscript{129} See Jorge Madrazo Cuellar, \textit{The Ombudsman and His Relationship with Human Rights, Poverty and Development}, in \textit{2 The International Ombudsman Yearbook, supra} note 9, at 129, 132 (noting that neo-liberal economic policies contributed to economic problems in places such as Latin America).
\textsuperscript{130} See id.
single office-holder ombudsman in developing countries, especially in Africa and Asia.\(^{131}\)

The shape of human rights ombudsman institutions in developed countries is also changing because of the additional financial resources inherent in establishing separate horizontal accountability institutions.\(^{132}\) The cost-saving rationale may also be a reason for merging separate institutions. These considerations may result in the transformation of a classical ombudsman into a human rights ombudsman, an expansion of the mandates of an existing human rights ombudsman, or the creation of a new hybrid institution.\(^{133}\) For example, a 2009 government report recommended that the Children’s Ombudsman in Ireland be merged into the general ombudsman institution.\(^{134}\) If it had been implemented, this change would have turned Ireland’s classical ombudsman into a human rights ombudsman.\(^{135}\) In France, 2011 legislation will eliminate the country’s independent Défenseur des Enfants and entrust its child protection functions to a deputy within a larger Defender of Rights institution.\(^{136}\)

C. International Initiatives to Establish National Human Rights Institutions

Over the past twenty-five years, the international community has placed greater emphasis on the implementation of states’ international human rights obligations at the domestic level through the establishment and strengthening of NHRI s.\(^{137}\) The U.N. standards for NHRI s, popularly called the “Paris Principles,” were drafted in the early 1990s.\(^{138}\) Although not legally binding, the Paris Principles are consid-

\(^{131}\) See Reif, supra note 1, at 88; Oliveira & Ximenes, supra note 122, at 1 n.2.
\(^{132}\) See Reif, supra note 1, at 406 (noting the financial impact of retaining an independent ombudsman capable of performing its functions).
\(^{133}\) See id. at 88 (“One factor [for establishing hybrid institutions] is that fewer financial and human resources are needed to operate one office rather than two separate institutions.”).
\(^{134}\) See Barry O’Halloran & Ruadhán MacCormaic, Merger of State Bodies Would Save €83m, Irish Times, July 17, 2009, at 9.
\(^{135}\) See Reif, supra note 1, at 8 (noting that a human rights ombudsman “combines both the ombudsman and human rights commission roles”).
\(^{137}\) See Reif, supra note 50, at 275 (“The United Nations has recently affirmed the significance of national human rights institutions for the protection and promotion of human rights . . . .”).
erred to be the core standards for independent and effective NHRI.\textsuperscript{139} Although the Paris Principles suggest a human rights commission as the model NHRI, the U.N. began to accept human rights ombudsmen as NHRI later in the 1990s.\textsuperscript{140} In 1994, an International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights was established under the auspices of the U.N.’s High Commissioner for Human Rights, and later created a NHRI accreditation process that, in effect, grants its highest accreditation only to human rights commissions and human rights ombudsman institutions.\textsuperscript{141} Paralleling this move, U.N. human rights treaty committees have issued general comments that call on contracting state parties in major U.N. human rights treaties to establish or strengthen NHRI and have also made recommendations to states on the establishment and strengthening of NHRI in concluding observations to periodic state reports.\textsuperscript{142}

On a regional basis, both the Council of Europe (COE) and the Organization of American States (OAS) have strongly supported the human rights ombudsman model.\textsuperscript{143} In particular, the mandate of the COE’s Commissioner for Human Rights includes facilitating the activities of national ombudsmen or similar institutions in the human rights field in COE member states.\textsuperscript{144} This is unsurprising because the human

\textsuperscript{139} See Reif, supra note 1, at 95–96.


\textsuperscript{142} See id. at 31; Reif, supra note 1, at 116–21.

\textsuperscript{143} See Reif, supra note 140.

rights ombudsman format originated in Europe and quickly became the predominant model in both Europe and Latin America.\footnote{See Reif, \textit{supra} note 1, at 172.}

Some NHRIs have been externally imposed by international actors.\footnote{See id. at 260–84.} In particular, post-conflict peace-building processes undertaken by the U.N. and regional organizations resulted in the establishment or strengthening of NHRIs, most often employing human rights ombudsmen during the peace processes in Latin American and Central and Eastern European nations.\footnote{See id. (discussing the post-conflict peace-building processes in El Salvador, Bosnia and Herzegovina, Kosovo, and East Timor).} As part of the good governance initiatives launched in the late 1990s, international financial institutions and donor states pressured other nations to establish or strengthen NHRIs.\footnote{See id. at 77.} Pegram argues, however, that the concept of diffusion of NHRIs by coercion is of limited use in explaining their increased popularity during this period.\footnote{See Pegram, \textit{supra} note 78, at 760.}

Given the Paris Principles’ focus on the human rights commission, the large number of human rights ombudsmen established during the first half of the 1990s must have been due to the influence of factors other than these standards.\footnote{See Reif, \textit{supra} note 1, at 88–89, 96. In addition to the pre-1990 Spanish, Portuguese, Swedish, Polish, Guatemalan, and Ugandan institutions, the following human rights ombudsman institutions were enshrined in law early on: Hungary (1990 constitution, 1992–1993 law); Slovenia (1991 constitution, 1993 law); Lithuania (1992 constitution, 1994 law); Croatia (1990 constitution, 1992 law); Macedonia (1991 constitution); Russia (1993 constitution); El Salvador (1992 constitutional amendment and law); Costa Rica (1992 law); Honduras (1992 decree, 1995 constitution); Nicaragua (1995 constitutional reform and law); Colombia (1991 constitution, 1992 law); Argentina (1993 law, 1994 constitution); Peru (1993 constitution, 1995 law); Bolivia (1994 constitution); Paraguay (1992 constitution, 1995 law); Belize (1994 law); Ethiopia (1994 constitution); Lesotho (1993 constitution); Malawi (1994 constitution); Namibia (1990 constitution and law); and Seychelles (1993 constitution). \textit{See id.} at 126, 141, 145, 157–59, 172, 188–90, 206–07, 220–23.} These influences were likely regional rather than international in nature. In Europe and Latin America, inter- and intra-regional legal transplantation was probably the initial cause, and the support of regional organizations such as the COE and later the OAS likely continued the trend.\footnote{See id. at 89–93; see also Beth A. Simmons, \textit{Mobilizing for Human Rights: International Law in Domestic Politics} 110–11 (2009) (discussing empirical research finding that governments are influenced by other governments in the same region in decisions whether to and to what extent to make commitments under the core U.N. human rights treaties).} Nevertheless, as the U.N. increasingly acknowledged human rights ombudsmen as NHRIs, U.N.
standards, interpretations, recommendations, and accreditation rules inevitably would have exerted more influence on the establishment of human rights ombudsmen.

D. Treaties and Other International Initiatives that Use NHRIs for Domestic Implementation

A growing number of recent U.N. human rights treaties and initiatives call on nation states to establish or use existing NHRIs to implement their treaty obligations and improve human rights protections.\textsuperscript{152} States have reacted by creating NHRIs—including human rights ombudsmen—or by adding a human rights protection mandate to the duties of their existing ombudsman.\textsuperscript{153} The following section discusses the impact of developments in the areas of children’s rights; the prevention of torture and other cruel, inhuman or degrading treatment or punishment; and multinational corporations and human rights on these institutions.\textsuperscript{154}


The U.N. Convention on the Rights of the Child (CRC), ratified by nearly every nation state, contains civil, political, economic, social, cultural, and protective rights for children and youth.\textsuperscript{155} In 2002, the U.N. Committee on the Rights of the Child issued General Comment Number Two, which stated that CRC parties should establish independent NHRIs, children’s ombudsmen, or children’s commissioners to promote and monitor the implementation of the CRC, using a thematic institution in states with enough resources or a “broad-based NHRI that includes a specific focus on children” in states with limited resources.\textsuperscript{156}

\textsuperscript{152} See Reif, supra note 1, at 97–99, 116–23.
\textsuperscript{153} See id. at 82–83.
\textsuperscript{156} Comm. on the Rights of the Child, The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, ¶ 6, U.N. Doc. CRC/GC/2002/2 (Nov. 15, 2002). The General Comment also states that if a broad-
Unfortunately, a relatively small number of parties to the CRC have established children’s ombudsman institutions to date, and there is little uniformity.\textsuperscript{157}

Rather than create a separate office or institution, states are more likely to use their human rights ombudsman or commission to address children’s rights and to implement the CRC. For example, in Latin American and European countries, some human rights ombudsmen have developed internal departments for children’s rights protection that place a special focus on investigations involving children.\textsuperscript{158} The Greek government responded to the U.N. Committee on the Rights of the Child recommendations in 2003.\textsuperscript{159} Greece’s legislation expanded the mandate of its human rights ombudsman to include the defense and promotion of children’s rights, established a Deputy Ombudsman for Children, and gave the institution jurisdiction over both the public and private sectors in matters concerning children.\textsuperscript{160} In 1995, Finland’s Parliamentary Ombudsman was transformed into a human rights ombudsman, and in 1998 the parliament requested that the ombudsman place a special focus on children’s rights.\textsuperscript{161} Regardless of their form, human rights ombudsman institutions worldwide are increasingly addressing children’s rights issues through the performance of their duties.

Based NHRI is used, it should have either an identifiable commissioner specifically responsible for children’s rights or a specific section or division responsible for children’s rights. \textit{See id.}\textsuperscript{157}


\textit{See Linda C. Reif, The Ombudsman and the Protection of Children’s Rights, 17 ASIA PAC. L. REV. 27, 38–48 (2009)} (discussing such developments in Finland, Spain, and Greece).\textsuperscript{158}

\textit{See id.} at 46–48.\textsuperscript{159}

\textit{See id.} at 46–47.\textsuperscript{160}

2. Designation of the Human Rights Ombudsman as a National Preventive Mechanism Under OPCAT

On June 22, 2006, OPCAT entered into force.\textsuperscript{162} OPCAT is designed to enhance the implementation of state obligations in the Convention Against Torture, one of the U.N.’s core human rights treaties.\textsuperscript{163} Article One of OPCAT creates a system for independent international and domestic bodies to conduct regular visits to facilities where persons are “deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”\textsuperscript{164} State parties are required to establish, designate, or maintain one or more independent domestic visiting bodies, called national preventive mechanisms (NPMs), that give due consideration to the Paris Principles in conducting these visits.\textsuperscript{165} Moreover, states must allow regular visits by the NPMs to facilities where persons are deprived of their liberty.\textsuperscript{166} The purpose of these visits is to strengthen the protection of persons detained in these facilities.\textsuperscript{167} The NPMs must be given powers to examine detained persons, make recommendations to the government with respect to relevant obligations of international law, and submit observations and proposals concerning extant or proposed legislation.\textsuperscript{168}

Some OPCAT states have established a new institution as their NPM; others utilize an existing human rights commission.\textsuperscript{169} A pre-existing human rights ombudsman is often well-suited to this task: some ombudsman institutions, particularly those in Europe, already have the power to inspect facilities where persons are involuntarily detained and, thus, a number of OPCAT state parties have designated their human


\textsuperscript{163} See OPCAT, supra note 162, preamble.

\textsuperscript{164} Id. The international body is the U.N. Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the U.N. Committee Against Torture, which has powers similar to the NPMs. See id. art. 2.

\textsuperscript{165} Id. arts. 2, 3.

\textsuperscript{166} Id. art. 4.

\textsuperscript{167} Id.

\textsuperscript{168} See OPCAT, supra note 162, art. 19.

\textsuperscript{169} See generally Global Status of Ratifications, Signatures and NPM Designations, Ass’N FOR THE PREVENTION OF TORTURE (Nov. 2010), http://www.apl.ch/npm/OPCAT1110.pdf (listing fifty-seven states parties, thirty-four of which had designated an NPM as of November 2010).
rights ombudsman as an OPCAT NPM.\textsuperscript{170} A few nations, such as Denmark, New Zealand, and Luxembourg, have even designated their classical ombudsman as their NPM or as one of a number of NPMs.\textsuperscript{171} These designations demonstrate that European nations are the most predisposed to designate their human rights or classical ombudsman institutions as OPCAT NPMs.\textsuperscript{172} Designating human rights ombudsmen as OPCAT NPMs adds another important human rights protection function to the institution and increases the institution’s ties to the international human rights community.

3. Multinational Corporations, Human Rights, and NHRIs

In recent years, the U.N. human rights overseers have turned their gaze to the behavior of multinational corporations (MNCs) and their role in human rights breaches. In April 2008, John Ruggie, the U.N. Secretary-General’s Special Representative on Business and Human Rights, issued a report entitled “Protect, Respect and Remedy: a Framework for Business and Human Rights” (“Ruggie Report”).\textsuperscript{173} One of the core principles of the Ruggie Report is the need for more effective judi-

\textsuperscript{170} See European Ombudsman-Institutions, supra note 10, at 491–92 (providing list of ombudsmen in Europe with inspection powers). As of November 2010, the human rights ombudsman institutions in Albania, Armenia, Azerbaijan, Costa Rica, Cyprus, Czech Republic, Estonia, Georgia, Macedonia, Moldova (with NGOs), Peru, Poland, Slovenia (with NGOs), Spain, and Sweden (with the Chancellor of Justice) have been designated as NPMs. See Global Status of Ratifications, Signatures and NPM Designations, supra note 169, at 1–4. The human rights ombudsman institutions in Croatia, Finland, Kazakhstan, Montenegro, Nicaragua, and Ukraine are under consideration for designation as NPMs. See id.; Summary of the Annual Report 2007, Parliamentary Ombudsman of Fin., 24 (Feb. 25, 2008), http://www.oikeusasiamies.fi/dman/Document.phx?documentId=vl22108104517482&cmd=download.

\textsuperscript{171} See Changes to Jurisdiction of the New Zealand Ombudsmen Institution, IOI Newsletter (Int’l Ombudsman Inst.), Dec. 2008, at 7, http://www.theioi.com/publications/i-o-i-newsletter (follow “IOI Newsletter_200812_English” hyperlink) [hereinafter I.O.I. Newsletter] (noting that the Human Rights Commission is the central NPM); Global Status of Ratifications, Signatures and NPM Designations, supra note 169, at 2, 3; The OPCAT Tasks: General Principles, Danish Parliamentary Ombudsman (Aug. 28, 2009), http://en.ombudsmanden.dk/opcat/. One might argue that giving an OPCAT NPM designation to a classical ombudsman pushes the institution into the human rights ombudsman category because the institution acquires an express and ongoing role in implementing the state’s human rights treaty obligations. See Reif, supra note 1, at 82–83. Consequently, this position would increase the number of human rights ombudsmen relative to classical ombudsman institutions.

\textsuperscript{172} See Global Status of Ratifications, Signatures and NPM Designations, supra note 169, at 2–4.

cial and non-judicial remedies for victims of corporate human rights violations; NHRI are specifically included as non-judicial remedies to investigate and punish human rights breaches by companies.\textsuperscript{174} The Ruggie Report states, “The actual and potential importance of these institutions cannot be overstated. Where NHRI are able to address grievances involving companies, they can provide a means to hold business accountable. NHRI are particularly well-positioned to provide processes—whether adjudicative or mediation-based—that are culturally appropriate, accessible, and expeditious.”\textsuperscript{175} The Ruggie Report was accompanied by research on eighty-five NHRI, finding that at least forty of these can handle complaints related to the human rights activities of companies.\textsuperscript{176} While this research is incomplete, the institutions listed are predominantly human rights commissions and human rights ombudsman institutions.\textsuperscript{177}

In June 2008, the U.N. Human Rights Council welcomed the Ruggie Report and extended Ruggie’s mandate for three more years so he could “operationalize” his report.\textsuperscript{178} Regarding non-judicial remedies, Ruggie has indicated that his “focus is on how to strengthen existing mechanisms, and identifying where new ones might be required.”\textsuperscript{179} Consequently, there will likely be an increasing U.N. and state interest in the use of human rights ombudsman institutions and commissions in the investigation of human rights breaches by corporate actors. Classical ombudsmen, lacking an express human rights protection mandate and with a limited, public sector jurisdiction, will probably not have the same attraction.\textsuperscript{180} This may also provide the impetus for some states to transition their classical ombudsman to a human rights ombudsman. The jurisdiction of human rights ombudsmen, however, remains as a potential stumbling block: most MNC conduct occurs in the private sector, and the authority of many human rights ombudsmen is limited

\textsuperscript{174} See id. ¶¶ 84–85.
\textsuperscript{175} Id. ¶ 97.
\textsuperscript{176} Id. ¶ 96.
\textsuperscript{179} Id.
\textsuperscript{180} See Reif, supra note 1, at 2–3, 8–9.
to the public sector. Accordingly, the jurisdiction and authority of human rights ombudsmen would have to be extended to private sector activity before they could investigate MNCs.

III. HUMAN RIGHTS OMBUDSMAN MANDATES: CORE POWERS AND OPERATING PRACTICES

There is no uniform model for a human rights ombudsman. Human rights ombudsman institutions vary considerably in their structure, functions, and powers, and these differences are often seen both intra- and inter-regionally. For example, except for Spain and Portugal, most Western European human rights ombudsman institutions more closely reflect the classical ombudsman model of investigation, recommendation, and reporting. In contrast, human rights ombudsman institutions in Latin America and Central and Eastern Europe typically have more extensive powers. Hybrid ombudsman institutions with human rights mandates in other parts of the world vary widely; some are limited to the classical powers, while others have expanded authority.

Both a comprehensive survey of the many human rights ombudsman institutions worldwide and the effectiveness of individual institutions are beyond the scope of this Article. NHRI effectiveness at any point in time is determined by many interrelated legal and non-legal factors. From the perspective of comparative law, the functional suc-

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181 See id. at 3; Reif, supra note 158, at 47.
182 See Ruggie Report, supra note 173, ¶¶ 84–85.
184 See Reif, supra note 1, at 191.
185 See id. at 209–12, 222, 234–37, 282–84 (noting that institutions in Namibia, Seychelles, East Timor, and Jamaica have more expansive powers).
186 See id. at 395–410; Reif, supra note 140. These legal and non-legal factors include compliance with the Paris Principles, democratic government, independence of the NHRI, broad jurisdiction over human rights matters, sufficient powers to carry out the NHRI’s mandate, the provision of sufficient financial and human resources, the appointment of an ombudsman and staff with the appropriate expertise, experience and pluralism to handle all mandates successfully, accessibility of the institution, cooperative relationships with
cess—or lack thereof—of ombudsman transplants is also beyond the scope of this Article given that many, if not all, of the same factors come into play in individual jurisdictions in determining this question. Instead, the following section engages in a more limited undertaking: it examines a selection of the core legal powers granted to, and operating practices instituted by, human rights ombudsman institutions. In doing so, it highlights those that should be regarded as essential for all human rights ombudsman institutions.

A. Specialized Ombudsman Institutions, Deputy Ombudsmen, and Designated Units or Departments

When a government adopts the human rights ombudsman model, it must decide whether to create one institution or several, depending on the human rights needs of the state or territory. Furthermore, a government can create multiple human rights ombudsman institutions. For example, Hungary has separate parliamentary commissioners for civil rights, national and ethnic minority rights, environmental protection (“future generations”), and data protection and freedom of information, although they are all housed in the same building. Due to the forces described above, it is far more common for jurisdictions to establish one human rights ombudsman institution rather than multiple thematic institutions. Moreover, institutions tend to create sub-specialties where human rights and general administrative oversight functions are separated. Sometimes there is even specialization in particular areas of human rights.
Specialization can be accomplished through a variety of legal provisions and operating practices. These include the appointment of deputy ombudsmen for specific human rights areas by the legislature, or a more informal appointment by the ombudsman without an express legislative mandate. Another common practice is to create separate departments or units for different focus areas. For example, numerous Latin American human rights ombudsman institutions have departments for women’s rights and children’s rights. As discussed above, growing numbers of human rights ombudsmen are being designated as OPCAT NPMs. This trend is expected to produce more internal specialization: Costa Rica’s Defensor de los Habitantes has already created an NPM unit.

B. The Ombudsman’s Jurisdiction over Government Departments and Human Rights

The breadth of a human rights ombudsman’s jurisdiction plays a crucial role in the ability of the institution to protect human rights. A human rights ombudsman should have jurisdiction over all of the government departments, agencies, and other public bodies that are possible rights-infringers. In particular, a human rights ombudsman should have jurisdiction over the police, armed forces, immigration and refugee departments, prisons, detention centers, young offender cen-

194 See id. Legislative provisions are less common but do exist. For example, legislation created the Deputy Ombudsman for Children of Greece and a legislative enactment will place a deputy Défenseur des Enfants inside France’s Defender of Rights institution. See Rachel Hodgkin & Peter Newell, The Role and Mandate of Children’s Ombudspersons in Europe: Safeguarding and Promoting Children’s Rights and Ensuring Children’s Views Are Taken Seriously, EUR. NETWORK OMBUDSPERSONS FOR CHILD., 2, 10, 17, 36, 40 (Dec. 2010), http://www.crin.org/docs/ENOC%20Malta%20report%20final.pdf; Members, supra note 157. Legislation may also stipulate that there be a deputy focusing on women’s rights, such as in Ethiopia. See Reif, supra note 1, at 114–15. The Ethiopian deputy also focuses on children’s rights. See id.

195 See Reif, supra note 140; supra notes 169–172 and accompanying text.

196 See Reif, supra note 140; supra notes 169–172 and accompanying text.

197 See Global Status of Ratifications, Signatures and NPM Designations, supra note 169, at 2. Other human rights ombudsman offices do not create distinct departments, but allocate tasks differently. See Reif, supra note 158, at 40. For example, Finland’s Parliamentary Ombudsman, a human rights ombudsman institution, has two deputies, and subject-matter areas are divided between the three appointees. See id.

198 See Reif, supra note 1, at 87.

199 See Reif, supra note 140 (“[S]ince ombudsmen scrutinize administrative conduct they regularly investigate authorities that are infringing human rights such as the police, prisons and immigration authorities.”).
ters, and other facilities where persons are held involuntarily. For example, investigations by a wide variety of ombudsman institutions into child protection matters show that governments can infringe on children’s rights not only through the conduct of child welfare, criminal justice, and police authorities, but also through the behavior of departments in charge of health, education, prison, immigration, and asylum, among others.

A human rights ombudsman should also have jurisdiction over a broad range of specific human rights. In addition to civil and political rights, economic, social, and cultural rights should also fall within the institution’s mandate. Jurisdiction over these rights is particularly important given that they are often non-justiciable; thus, an NHRI like a human rights ombudsman may be the only venue for members of the public to complain about their violation. In fact, complaints concerning health, education, and other social services are quite common for human rights ombudsmen.

C. Jurisdiction over Private Sector Actors

One typical characteristic of the ombudsman institution is that its jurisdiction is limited to public sector conduct only, usually the administrative or executive branch of government and rarely the judicial branch. While a growing number of all types of ombudsman institutions have jurisdiction over private actors providing public services, a minority of human rights ombudsmen have more extensive jurisdiction over private sector conduct. For example, human rights ombudsman institutions in Namibia, Guatemala, El Salvador, Honduras, Colombia, and Papua New Guinea have jurisdiction over private persons in human rights cases to differing degrees. In Europe, some human rights

200 See id. Some authorities (for example, the armed forces or immigration authorities) may not exist in sub-national jurisdictions with a human rights ombudsman, but jurisdiction over the full spectrum of facilities for involuntary detention is essential if an ombudsman is to be designated as an OPCAT NPM. See id.

201 See Reif, supra note 1, at 330–31, 302.

202 See id. at 113.

203 See id. at 402.

204 See id. 11–13, 302 (noting different types of ombudsman jurisdiction over the judicial branch in Sweden, Finland, Slovenia, Albania, and Costa Rica).

205 See id. at 401–02.

206 See Reif, supra note 1, at 3, 402, 403. Hybrid commissions in Ghana and Tanzania also have jurisdiction over private sector conduct. See id.
ombudsmen have subject-specific jurisdiction over private actors. Portugal’s *Provedor de Justiça* has limited jurisdiction over private sector entities that involve a special relationship of dominion in the protection of rights. Greece’s ombudsman has jurisdiction over violations of children’s rights allegedly committed by private persons. As argued earlier, there will likely be growing pressure on states to expand the jurisdiction of NHRIs to include private corporate conduct.

**D. Own-Motion Investigation Power**

Many classical and human rights ombudsman institutions have the power to launch investigations on their own motion. Own-motion investigations can be used in a variety of situations to enhance human rights protection—because the ombudsman need not wait for an actual complaint, she can be more proactive in monitoring events in her jurisdiction. The ombudsman can monitor the media for reports on behavior that may constitute the target of an own-motion investigation. If the ombudsman has the power to inspect facilities where persons are detained involuntarily, such visits may bring to light situations which the ombudsman may desire to investigate. Thus, own-motion investigations can benefit vulnerable populations such as prisoners, children, and the mentally ill, because they are less likely or entirely unable to complain themselves. Furthermore, a pattern of complaints about the same matter may indicate a systemic problem involving human rights issues; an own-motion investigation can be an effective mechanism to address larger systemic problems in addition to the individual concerns.

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207 *See European Ombudsman-Institutions*, supra note 10, at 493 (listing Cyprus, Estonia, Greece, Latvia, and Portugal as examples); *Equinet*, supra note 154.

208 *See Reif*, supra note 1, at 3, 141–42.

209 *See id.* at 153.

210 *See Ruggie Report*, supra note 173, ¶¶ 84–85. Admittedly, this extension of jurisdiction could have its disadvantages. It has the potential to generate large numbers of complaints or investigations that drain financial and human resources, possibly resulting in backlogs and delays.

211 *See European Ombudsman-Institutions*, supra note 10, at 21. For example, most ombudsmen in Europe have own-motion investigatory power. *See id.* at 21, 490.

212 *See Reif*, supra note 1, at 3, 403; Hans Gammeltoft-Hansen, *The Ombudsman as a Non-Traditional Tool for Citizen Participation, in 2 The International Ombudsman Yearbook*, supra note 9, at 189, 193–95.

213 *See Reif*, supra note 1, at 3, 403.

214 *See Gammeltoft-Hansen*, supra note 212, at 194–95; *Reif*, supra note 50, at 273.

215 *See Reif*, supra note 1, at 104; Gammeltoft-Hansen, *supra* note 212, at 193–95.
Examples of own-motion investigations of human rights issues abound. The public reports of these investigations are valuable, persuasive tools for ombudsmen to use in effecting legal or political reform. For example, various human rights ombudsman institutions have conducted own-motion investigations concerning children and their rights, covering matters such as the child welfare system, the child custody process, delays in investigation of alleged sexual abuse of children, police treatment of minors, the juvenile justice sector, the treatment of children in schools, and repatriation procedures for unaccompanied immigrant minors. Because many affected individuals are unable to lodge complaints themselves, all human rights ombudsman institutions should be given strong own-motion investigation powers.

E. Inspection Powers

A number of human rights and classical ombudsman institutions have the statutory power to inspect places where persons are involuntarily detained to insure against inappropriate treatment. The inspection power can cover a broad range of locations, including prisons, detention centers, immigration facilities, young offender centers, and mental health care facilities. In the early 1990s an empirical study of ombudsman institutions in forty-eight nations found that sixty-six of seventy-six institutions (86.8%) had an inspection power. More recently, a survey of ombudsman institutions found that most, but not all, of the human rights ombudsmen throughout Europe have the power to inspect a range of facilities. Additionally, a strong inspection

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216 See Reif, supra note 158, at 41–48.
217 See European Ombudsman-Institutions, supra note 10, at 41–42; supra note 214 and accompanying text.
218 See European Ombudsman-Institutions, supra note 10, at 41–42.
power backed up by adequate financial support is essential for an ombudsman that has been assigned OPCAT NPM duties.\footnote{See generally Global Status of Ratifications, Signatures and NPM Designations, supra note 169 (listing fifty-four states parties, thirty-seven of which had designated an NPM as of November 2010). For example, Poland’s Commissioner for Civil Rights Protection was designated as the nation’s NPM on January 18, 2008 and carried out seventy-three visits in 2008 in fulfillment of his OPCAT duties. See European Union Law, European Ombudsman—Newsletter, Apr. 2009, at 32, available at https://oldbookshop.publications.europa.eu/ebookshop/download.action?fileName=QKAB09012ENC_002.pdf&eubphfUid=10243311&catalogNbr=QK-AB-09-012-EN-C.}

In short, inspection powers should be given to all human rights ombudsman institutions. They should be exercisable by the ombudsman on her own motion at any time, cover the full range of detention facilities, and include powers sufficient to satisfy any international obligations of the state under OPCAT. These powers should be exercised regularly.

F. Litigation Powers: The Constitutional Court and Other Legal Interventions

Many national human rights ombudsmen in Europe and Latin America, where civil law systems dominate, have been given additional powers. They may bring actions on constitutional matters involving human rights to a constitutional or supreme court, become involved in administrative court proceedings, and prosecute public officials.\footnote{See European Ombudsman-Institutions, supra note 10, at 51–53, 55–56. Given the number of institutions with these powers, a full survey is not possible within the scope of this Article.} Professor Gabriele Kucsko-Stadlmayer’s survey of European ombudsmen provides the following information: four human rights ombudsmen can start criminal proceedings, while many can recommend that they be instituted; seven can initiate disciplinary proceedings, while many can recommend that they be instituted; eleven can make applications before administrative or other courts; and many have the right to bring actions before the nation’s constitutional court.\footnote{See id. at 53–56, 508–10, 515–20. These numbers do not include classical ombudsmen who may have some of these powers, including disciplinary or prosecution powers. See id.}

To summarize, the number and form of European ombudsman actions before constitutional courts varies, but a fair number can challenge the constitutionality of laws and two can contest the constitutional compatibility of treaties.\footnote{See id. at 51–53, 515–20.} Several can contest the constitutionality of government action in individual cases.\footnote{See id.} Several may take the
unusual approach of arguing that the government has acted unconstitutionally by its failure to legislate.\textsuperscript{226} Lastly, some human rights ombudsmen can request the interpretation of constitutional provisions.\textsuperscript{227}

The Portuguese and Spanish institutions were the first to have constitutional court powers and provide contrasting examples of their frequency of use.\textsuperscript{228} The Portuguese \textit{Provedor de Justiça} is empowered to refer two types of constitutionality actions before the Constitutional Court: (1) an action to determine whether laws are unconstitutional or illegal and (2) an assessment regarding whether the government has failed to comply with the constitution through the omission of legislative measures necessary to render constitutional norms binding.\textsuperscript{229} Since it began operating in 1975, the \textit{Provedor} has launched 175 actions before Portugal’s Constitutional Court.\textsuperscript{230} Spain’s \textit{Defensor del Pueblo} is empowered to bring two types of actions before Spain’s Constitutional Court: (1) actions challenging the constitutionality of legislative action, known as abstract review and (2) actions in support of an individual’s core constitutional rights in concrete cases, known as concrete review or the \textit{amparo} action.\textsuperscript{231} As compared with the Portuguese \textit{Provedor}, the Spanish \textit{Defensor} has launched substantially fewer constitutionality actions over a slightly shorter time frame; the \textit{amparo} action before the Constitutional Court is rarely used because individuals have the same right of action.\textsuperscript{232}

\textsuperscript{226} See id. at 354–55, 517–18 (citing Portugal as an example).
\textsuperscript{227} See European Ombudsman-Institutions, supra note 10, at 53–55, 517–18.
\textsuperscript{228} See Reif, supra note 42, at 36.
\textsuperscript{230} See The Work of Ombudsmen & Similar Bodies, supra note 220, at 63 n.1.
\textsuperscript{231} See Reif, supra note 1, at 147–48.
The constitutional litigation power has also been influential in Latin America. Many Latin American human rights ombudsmen can take “unconstitutionality,” amparo, habeas corpus, and other actions in their country’s courts. Some Caribbean, African, and Asian human rights ombudsman institutions also have a variety of powers related to legal representation, such as providing financial support and legal advice to complainants who are launching their own constitutional litigation and taking court action.

The vast majority of ombudsman institutions with prosecution powers, constitutional court litigation powers, or administrative court litigation powers exist in civil law states. Granting human rights ombudsman institutions litigation powers in these discrete judicial structures is a workable—even efficient—procedure for achieving timely decisions on constitutional and administrative legal questions. Further research should be done to determine whether a human rights ombudsman in a common law or pluralistic legal jurisdiction could operate in a cost-effective and timely manner with a litigation mandate. In common law jurisdictions, given their judicial branch structures, it may not even be possible to give a human rights ombudsman civil-law-type litigation powers. Giving amicus curiae or intervener functions to hu-

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233 See Reif, supra note 1, at 188–92.
234 See id. at 188 & n.116, 189 & nn.118–20, 190 & nn.123–26, 192–93, 198, 201, 262 (Argentina: unconstitutionality, amparo actions; Peru: unconstitutionality, amparo, habeas corpus, habeas data, popular actions; Guatemala: judicial processes; Costa Rica: unconstitutionality, amparo, habeas corpus actions; Nicaragua: unconstitutionality, amparo, exhibicion personal actions; Panama: popular, nullity, amparo, habeas data actions; Colombia: unconstitutionality, popular, tutela, habeas corpus actions; Ecuador: unconstitutionality, amparo, habeas data actions; Bolivia: unconstitutionality, nullification, amparo, habeas corpus actions; Venezuela: unconstitutionality, amparo, habeas corpus, habeas data actions; Paraguay: amparo, habeas corpus actions). A few of these institutions can also participate in administrative court procedures to protect human rights. See id. at 191.
235 See id. at 208, 210, 220–23, 242–45. For example, the Jamaica Public Defender recommends that some complainants litigate constitutional rights issues and helps those complainants by compiling a list of pre-approved barristers who are qualified to litigate the issue and by administering a legal aid fund that pays for such litigation. See id. at 210. The Seychelles Ombudsman assists complainants in human rights charter litigation and may become a party to proceedings with leave of the court. See id. at 222 n.44.
236 See supra note 63 and accompanying text. In civil law countries, the constitutional court is considered to be outside the judicial branch of government and has the power to make legally binding decisions. See Lisa Hilbink, Beyond Manicheanism: Assessing the New Constitutionalism, 65 Md. L. Rev. 15, 22–23 (2006). A separate administrative court system exists in many civil law jurisdictions. See id.; see also EUROPEAN OMBUDSMAN-INSTITUTIONS, supra note 10, at 25–26. In a common law country, important legal issues are usually litigated in the general court system and appealed to a supreme court for final determination. See Edward McWhinney, Supreme Courts and Judicial Law-Making: Constitutional Tribunals and Constitutional Review xv, 1–3, 23–24 (1986).
human rights ombudsmen in common law jurisdictions may be more appropriate. Similarly, research is needed to determine whether more civil law states without constitutional courts, such as Scandinavian nations, could effectively add these types of litigation mandates to their ombudsman institutions.

G. Annual Reporting, Other Reports, Website Content, and Other Tools

A human rights ombudsman’s reports and website are easy methods to provide useful information and assistance to the public. Annual and special reports can provide information on the important investigations undertaken by the ombudsman, which may increase public understanding of the ombudsman’s role and the number of future complaints to the office. Moreover, reports may enhance the public perception of the usefulness of the institution. The ombudsman can also publicize and use reports in particular cases to persuade government authorities to change law and policy. Ombudsman offices that have OPCAT NPM status also need to describe the nature of this work in their annual reports or establish a separate reporting system.

Many ombudsman institutions have websites that provide public information regarding the activities of the office. These websites demonstrate the framework of the institution and what types of complaints it can investigate. Typically, they provide access to annual and special reports as well as to other relevant publications. Some websites also act as a means for members of the public to submit complaints to the ombudsman. Human rights ombudsmen go further and use their websites to enhance their human rights protection and promotion functions. Some post their public education publications on their websites. The website for Bolivia’s Defensor del Pueblo provides a worthy example: it has numerous publications on topics such as discrimination, racism, indigenous

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237 See European Ombudsman-Institutions, supra note 10, at 49.
238 See id. at 49–50; Reif, supra note 1, at 404, 407.
239 See European Ombudsman-Institutions, supra note 10, at 49–50. The investigative reports and public relations methodology of the Ontario Ombudsman Special Ombudsman Response Team is a good example of this phenomenon. See Reif, supra note 158, at 34. Further, annual reports can also be organized to highlight the human rights work of the multiple-mandate ombudsman by separating specific human rights issues into different chapters or sections. See European Ombudsman-Institutions, supra note 10, at 504.
240 See, e.g., Greek Ombudsman, supra note 183; The Parliamentary Ombudsman—JO, supra note 183.
rights, children’s rights, and women’s rights.\textsuperscript{241} Human rights ombudsmen focusing on children often have a special section of their website designed for use by children with child-friendly language and design features. For example, the website of Catalonia’s Síndic de Greuges, which has a Deputy Ombudsman for Children, contains a special section for minors.\textsuperscript{242} It enables children and youth to submit their own complaints and opinions to the Síndic by e-mail and contains educational materials on children’s rights.\textsuperscript{243}

A few human rights ombudsman institutions may also have the resources for regular radio or television shows. These programs are capable of widely disseminating information about their work and human rights throughout the country. Argentina’s Defensor del Pueblo is one such institution.\textsuperscript{244} Peru’s Defensor del Pueblo, in its early years of operation, obtained funding to create a television infomercial to inform the viewing public about the nature of their rights and about the scope of the institution’s ability to take complaints.\textsuperscript{245}

H. Promoting State Compliance with Human Rights Treaties, Human Rights Law Reform, Research, and Education

A number of human rights ombudsman institutions have the responsibility to improve the contents of domestic human rights law and may recommend that the state accede to or ratify human rights treaties.\textsuperscript{246} In connection with this responsibility, a human rights ombudsman may also be empowered to make law reform proposals and may even become involved in the amendment process.\textsuperscript{247} Latin American institutions often have these duties.\textsuperscript{248} A few European human rights ombudsmen perform similar functions.\textsuperscript{249}


\textsuperscript{242} See El Defensor d’Infants i Adolescents, Síndic de Greuges de Catalunya (Spain), http://www.sindic.cat/ca/page.asp?id=113 (last visited May 8, 2011).

\textsuperscript{243} See id. The website for the human rights ombudsman in Andalusia, Spain has similar sections. See Defensor del Menor de Andalucía, supra note 159.


\textsuperscript{245} See OMBUDSMAN’S Office: Protects your rights (Ombudsman’s Office of Peru, USAID) (videocassette) (on file with author).

\textsuperscript{246} See Reif, supra note 1, at 139, 190 n.124, 201–02, 262.

\textsuperscript{247} See id. at 188–90 nn.116–27.

\textsuperscript{248} See id. For example, the human rights ombudsmen in Peru, Colombia, Costa Rica, El Salvador, Nicaragua, Panama, Bolivia, Venezuela, and Paraguay all have these duties. See id. at 188–90 nn.116–27, 201–02, 262 (Peru: promote signature of treaties, propose new
Some human rights ombudsman institutions are empowered to engage in human rights research, to conduct studies, and to engage in human rights education. The educational efforts may be directed at public officials or the broader public. Again, a number of Latin American institutions, along with a few European ombudsmen, have these human rights education mandates.

In contrast to the potential difficulties of transporting human rights ombudsman litigation mandates from civil law systems to other legal systems, human rights research and education mandates can be provided to human rights ombudsman institutions in all types of legal systems. Full implementation of these such mandates is more likely contingent on sufficient resources.

Conclusion

The number of human rights ombudsman institutions has exploded over the course of the last three decades. They now account for at least fifty percent of the total number of ombudsman institutions worldwide. Human rights ombudsmen are prevalent in Latin America as well as in Central and Eastern Europe, but are increasingly found in Western Europe and other regions as well. There are many forces that will continue to drive nations to establish human rights ombudsman institutions. These include democratization, public institution-building or -rebuilding, comparative law influences, limited state resources, and international human rights law—in particular, the movement to establish NHRI. Additionally, the continuing development of international human rights law will increase the pressure on states either to expand the mandates of human rights ombudsman institutions or to give express human rights duties to classical ombudsman institutions. While most human rights ombudsmen are found in civil law jurisdictions, some of these forces may lead to a greater number of these institutions in common law jurisdictions.

249 See European Ombudsman-Institutions, supra note 10, at 56–57.
250 See id. at 57.
251 See id.
252 See id.; Reif, supra note 1, at 188 nn.118–20, 190 nn.123–26, 193, 262 (listing El Salvador, Guatemala, Honduras, Nicaragua, Panama, Colombia, Ecuador, Bolivia, Venezuela, and Paraguay as examples).
Some human rights ombudsman institutions have both administrative justice and human rights protection mandates while others stand much closer to the human rights commission model. There is considerable variation in the scope of the core powers given to and operating practices instituted by human rights ombudsman institutions. Excluding other factors that influence the degree of functional success of a human rights ombudsman transplant, a human rights ombudsman should be given wide jurisdiction over a spectrum of human rights and government actors. Such jurisdiction should include own-motion investigatory powers, inspection powers, and possibly deputy ombudsmen to focus on special human rights concerns such as children’s rights, women’s rights, and the protection of ethnic minorities. Additional human rights protection and promotion powers such as taking cases to constitutional or administrative courts, prosecuting public officials, lobbying government bodies to implement human rights treaties, and monitoring the state’s implementation of its international human rights obligations, law reform activities, and human rights research and education enhance the ombudsman’s core investigatory mandate. Governments should endow a human rights ombudsman with these additional functions and powers when the nature of the country’s legal system and the institutional structure of the state permit. Human rights ombudsman institutions with the power to litigate legal questions in the courts exist almost entirely in civil law jurisdictions; thus, further inquiry is needed to determine whether human rights ombudsman institutions established in common law or mixed systems could be given equivalent mandates.

Finally, all human rights ombudsman institutions must institute operating practices that further their ability to protect and promote human rights. Such practices could include the designation of units or departments for human rights matters, the employment of a diverse staff with appropriate human rights expertise, and the dynamic use of annual and special reports. In addition, the use of a website and the media to publicize the human rights jurisdiction of the office will help to inform the public about the human rights norms binding the state and ensure that the public utilizes the ombudsman in cases of human rights violations.