

The work of the Ombudsman Institutions in the promotion and protection of human rights: the Latin American experience

V Regional
Caribbean Ombudsman Association
Conference

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The Ombudsman Institution

Sweden

Justitie Ombudsman created as
representative of Parliament, acting
independent of Parliament to control
observance of law by courts and
government employees.

Authorized to take before justice those who
in the exercise of their function would
have committed illegalities or neglected
the correct performance of their own
duties

After World War II Incorporation in national legal systems

Ombudsman	→	Sweden
Controller of the State	→	Israel
Supplier of Justice	→	Portugal
Mediateur	→	France
Civic Defender	→	Italy
Parliamentary Commissioner	→	United Kingdom
Defender of the People	→	Spain

The Ombudsman Institution in America

Before 1492

- Inca Empire → Trucuyricuy the one that sees it all, watching operation of Imperial Council.

After 1492

- Protector of the Indians
- Law of Indies → Supervisor of the King, communicating to the Monarch the claims or the injustices committed by the Viceroy.

Creation and incorporation of the Institution



90s → Transition to democracy

The Institution in Latin America

All countries except
Chile, Uruguay and
Dominican
Republic.

First Ombudsman
Guatemala 1985
Constitutional mandate
except Costa Rica
(legal)



Features of the Institution in América

- Indicator of change in the region.
- Based on the Swedish and Spanish model.
- Developing according to each country.

Particularities

explicit high-priority
functions for the
defense of human
rights

competency to transfer
files to Public Ministry
and initiate judicial
processes

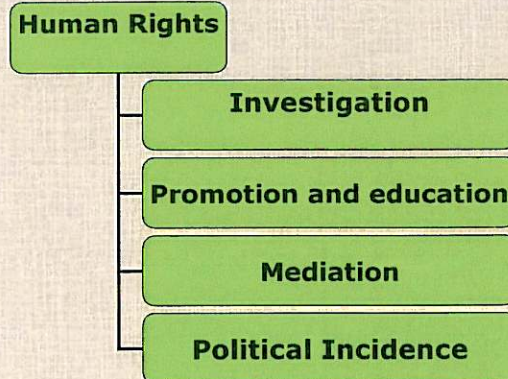
Features of the Institution in America

- ❑ Magistrate with persuasive, not cohesive power
- ❑ Process of appointment → parliamentary prevails: few countries indirect intervention of Executive.
- ❑ Duration of mandate → 3, 5, 6 or 7 years with reelection.

Characteristics of the Latin American Ombudsman

- ❑ Autonomous civil servant without any relation to political parties.
- ❑ Parliamentary representative who must present annual report to the Parliament.
- ❑ *Conscience magistrate*, whose credibility is measured by his moral stature, evident action and efficacy; the results of his performance produces.
- ❑ Constitutional rank.
- ❑ Controls all the public administration authorities.
- ❑ Supervises for the respect and validity of the human rights
- ❑ Authority to investigate presumed violations to human rights, to make reports and resolutions, but he does not have any faculty to revoke any kind of act.
- ❑ Must have a total political, administrative, budgetary and functional independence when performing his activities.

Main functions



Investigation

- Elaboration of studies regarding specific problematic
- Presentation of habeas corpus and actions of unconstitutionality
- Contributing to the exhaustion of domestic remedies

Investigation

- ❑ Carry out investigations of any kind against the Public Administration.
- ❑ Authority to search public premises without previous warning and to require any type of information, including the police and military offices.
- ❑ Immediate access to prisons.
- ❑ Real possibility to ask for the pertinent information to any government officers.
- ❑ Sanction to civil employees who obstruct the investigation or do not collaborate.

Promotion and Education

- ❑ Promotion of human rights contents
- ❑ Public awareness on its mandate
- ❑ Design and implementation of national programs on human rights

Mediation

- ❑ Participation in the resolution of large political conflicts
- ❑ Preparing their team for mediation
- ❑ Independent of the different position
- ❑ Content of that agreement not be imposed

Political Incidence

- ❑ Supervise political polices and propose recommendations
- ❑ Participate in public debates
- ❑ Participation as an observer in elections
- ❑ Elaboration of studies
- ❑ Close relation with the media
- ❑ Promote ratification of international instruments for human rights protection
- ❑ Promoting readjustment of internal legislation to commitments acquired internationally

Specific actions before the Inter-American System

- ❑ **Inter American Commission of Human Rights**
- ❑ **Inter American Court of Human Rights**

Specific actions before the Inter American Commission of Human Rights

- ❑ Presenting complaints, communications or petitions
- ❑ Verify that States cooperate with the Inter-American Commission
- ❑ Fact finding
- ❑ During investigation conducted by the Commission, introduce investigations done
- ❑ Support information and investigations conducted on human rights situation in a given country, where the Commission prepares a country report.
- ❑ Request precautionary measures

Specific actions before the Inter American Court of Human Rights

- ❑ Present amicus curiae
- ❑ Urge the State to request consultations on interpretation of the Convention or other treaties to the Inter American Court
- ❑ Urge the State to ask opinions on internal legislation according to International Law
- ❑ Participate as witness or expert when required
- ❑ Monitoring the compliance of judgments of the Court.

Challenges

- ❑ Assuming new functions according to national reality
- ❑ Process of appointment should not exceeded any reasonable limit
- ❑ Worst enemy of the Ombudsman is the lack of political will
- ❑ Adequate budget for developing functions

Challenges

- Avoid practices that tried to weakening the institution:
 - threatening the Ombudsman and employees of the institution;
 - budget cuts Ombudsman office's employees must have a suitable level of preparation and qualification, competitive salaries and working stability.
 - Appointment with political adjustments

As a closure

Latin America Ombudsman Institutions

Last decades



Control mechanisms on the
exercise of power



Effective respect of human rights

Strengthening democracy