

KARIN SUNDSTRÖM

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NATIONAL HUMAN RIGHTS INSTITUTIONS IN AFRICA: DESIGN AND EFFECTIVENESS



National Human Rights Institutions in Africa: Design and Effectiveness

Karin Sundström

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The Expert Group for Aid Studies (EBA)

Karin Sundström defended her PhD dissertation “Watchdogs or Lapdogs? National Human Rights Institutions in Africa” in March 2022, at the Department of Political Science, Stockholm University. Her research interests include human rights, state repression, democratisation, and international organisations.

The full-text version of her dissertation can be found here:

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Abstract

National human rights institutions (NHRIs) have important roles to play in the monitoring, promotion, and protection of human rights. Set up by governments, that have a special duty to uphold human rights but that at the same time are some of the biggest violators, these institutions can function as watchdogs or lapdogs depending on the choices that governments make. The first NHRI in an African country was established in 1966, but it was in the 1990s that their spread really took off. Since then, practically all countries have come to have at least one NHRI and NHRIs are increasingly independent and authoritative. The dissertation finds that NHRIs can indeed be effective, both in promoting and protecting human rights and in advancing good governance in general. However, it also shows that governments can be tempted to interfere in the institutions that they have established.

Introduction

Although governments are the primary guarantors and enforcers of human rights, they are also the primary violators of human rights (Cardenas, 2001, p. 5; Keck and Sikkink, 1998, p. 12). Since the early 1990s, in particular, governments have increasingly established so-called national human rights institutions (NHRIs). These institutions, that can take on different forms and be given different degrees of autonomy and authority, have spread around the world, including in the African continent that the dissertation, which this report draws on, focuses on. NHRIs have been defined by the United Nations (UN) as ‘a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights’ (UN Centre for Human Rights, 1995, para. 39). While their roots are old, going back to the Swedish Ombudsman of 1809 and the French consultative human rights commission of 1947, NHRIs have been the subject of increasing international and regional attention. This has included activity by international and regional organisations, non-governmental organisations (NGOs), and in development cooperation. Many different actors, thus, have supported the establishment and functioning of NHRIs, for example through workshops and other capacity-building efforts. These institutions are often discussed within frameworks of good governance and the rule of law. They are also included in the Sustainable Development Goals, in goal 16 on the promotion of just, peaceful, and inclusive societies, as an indicator (UN General Assembly, 2017). Specifically, this goal is related to the so-called Paris Principles, adopted by the UN General Assembly in 1993, which contain recommendations for the establishment and design of NHRIs. NHRIs are well placed to enhance governments’ capacity to uphold their duties and to provide means for redress. This capacity is the result of promotional activities, such as educating officials and the public, and of protection interventions, for example by making the regime aware of problems. Whether

understood primarily as mechanisms to enhance enforcement – e.g., by making binding decisions (e.g., compensating victims) or by implementing social sanctions (the more common approach) – or as mechanisms to improve capacity (e.g., by engaging in education), NHRIs can play important roles for improving compliance with norms and laws (e.g., Risse and Ropp, 2013). Thus, NHRIs can be one means for self-restraint for the state and a way to limit its capacity for repression (Cardenas, 2014; Schedler et al., 1999). The main argument of the dissertation is that existing research on NHRIs has tended towards a homogenising view of NHRIs, in that it has not fully studied the variation between institutions and within them over time. The dissertation therefore focuses on the dynamics and variation within and among regimes and their institutions, while also telling a story of the general development of NHRIs in African regimes.

Aim, research questions, and contributions

The aim of the dissertation is to contribute to the knowledge on institutional design, its correlates and consequences, with a focus on NHRIs in Africa. This is achieved through a mixed-methods study, combining quantitative and qualitative methods, which explores the choices that regimes make when it comes to the establishment, design, and change of NHRIs and how those choices impact the effectiveness of NHRIs. It responds to three research questions:

- *What kind of NHRIs have regimes established and why?*

This question is answered by describing and explaining the initial choices that regimes make when it comes to NHRIs, namely their type and design at establishment and the timing thereof. Methodologically, this is achieved chiefly by quantitative methods, including the use of a novel dataset on the design of NHRIs, but also by discussing the process in Namibia and South Africa when these regimes set up NHRIs.

- *Why, how, and to what extent do regimes change their NHRIs?*

This question is addressed by describing and explaining the changes that regimes make to their NHRIs. In doing so, the dissertation challenges notions of stability found in much institutional research in general and in research on NHRIs specifically (Linos and Pegram, 2016; North, 1990; Thelen, 1999). This is achieved by making full use of the new dataset, which contains information on the (possible) variation in the design of individual NHRIs over time, in both descriptive and explanatory statistics. In addition, the change and stability of not only formal – but also informal – aspects of NHRIs are covered in the case studies.

- *Why, how, and to what extent does institutional design matter for effectiveness?*

The final research question is answered by tracing the role of design for the effectiveness of NHRIs. Previous research (e.g., Cole and Ramirez, 2013) has focused mostly on the correlates with states' respect of human rights, where NHRIs is one piece of a much larger set of factors, whereas this dissertation focuses on the activities and output, such as handled cases, of the NHRIs; an aspect of effectiveness more easily tied to the institutions (Underdal, 2004; Wolf, 2010). Methodologically, this question is answered with the help of qualitative methods, specifically thematic analysis of documents and semi-structured interviews conducted during two field studies (the list of interviewees is found in Appendix 1). The studies take the form of case studies of Namibia and South Africa and their one and four NHRIs, respectively.

By answering these questions, the dissertation makes three principal contributions. First, it makes a theoretical contribution in its presentation of frameworks that tie together the establishment, design, change, and effectiveness of NHRIs.

Second, it makes an empirical contribution, both in its presentation and use of a new dataset, on the design of NHRIs in all African countries and over time, and in its in-depth studies of two carefully chosen cases. The dataset extends on existing ones (notably Cole and Ramirez, 2013; Kim, 2013; Koo and Ramirez, 2009; Linos and Pegram, 2016; Welch et al., 2021) in important ways as it provides data on, first, institutions over time (to capture possible change), second, theoretically informed features of formal design, and, finally, practically all African NHRIs, not only those of a certain type or those accredited with international organisations or peer networks.

Finally, it makes a methodological contribution to the research field of NHRIs in its careful combination of quantitative, statistical methods and qualitative, case study methods.

The cases of Africa, Namibia, and South Africa

The dissertation explores the choices made by African regimes when it comes to their NHRIs. The quantitative chapters, on the establishment and change of NHRIs, describe and explain patterns among all 54 African countries and their 88 NHRIs. Timewise, the analysis begins in the early 1960s, when the first NHRIs on the continent were established, and ends in 2014. The two qualitative chapters, on the effectiveness of NHRIs, focus on the institutions in, first, Namibia, and, second, South Africa.

Africa as a region was chosen in light of the way that NHRIs have spread to practically all countries on the continent. This development, I suggest, is surprising and deserving of attention considering the dominance of the executive branch, the prevalence of authoritarianism, and the variation in (and extent of) human rights violations – all things that should make regimes unlikely to have accountability mechanisms like NHRIs (see, for example, Chabal and Daloz, 1999; Herbst, 2000; Hyden, 2006).

Namibia and South Africa were chosen for the studies on effectiveness based on a logic of equifinality where their institutions have comparatively similar formal designs (in terms of legislation and constitutions) but have reputations from previous research as having quite different levels of effectiveness (Blaauw, 2009; Human Rights Watch, 2001; Musuva, 2009; Thipanyane, 2015). The study, thus, explains how similar design can lead to different outcomes in contexts that are similar in key alternative explanations (such as one-party dominance).

Theorising design and effectiveness

The dissertation develops theoretical frameworks, first, for describing the design and strength of NHRIs, second, for studying the changes to NHRIs, third, for explaining how design may impact the effectiveness of NHRIs, and, fourth, for explaining the establishment and change of NHRIs. This is done by drawing on previous research and theories, not only on NHRIs specifically but also, notably, on institutional design in general and on the independence of agencies and judiciaries.

The design and types of NHRIs

NHRIs come in different general types, largely determined by their broader mandate (e.g., Cardenas, 2014; Pegram, 2010). This dissertation distinguishes between (1) classical ombudsmen (COs), with a mandate focused on maladministration, (2) human rights commissions (HRCs), with a broad human rights mandate, (3) human rights ombudsmen (HROs), with a mandate of both maladministration and human rights, and (4) specialised institutions, such as children's ombudsmen, with a narrower mandate. These types, finally, can be combined in different ways by regimes, as they have systems of one, two, or more NHRIs (Besselink, 2000). While COs (and specialised institutions) are

often excluded from the concept of NHRI (e.g., Cardenas, 2014; Reif, 2015), their work and mandates often touch on human rights issues, such as the right to a fair trial, and I therefore side with those that include them (e.g., Koo and Ramirez, 2009; Pegram, 2010).

A large part of the dissertation, drawing on the new dataset, focuses on the formal (or, *de jure*) design, understood as written-down, official, enforceable sources, such as constitutions, legislation, and decrees (Helmke and Levitsky, 2004). Informal design, captured in the case studies, refers to features, norms, and patterns that have developed through practice rather than through formal documents. The actual design – i.e., *de facto* design – is made up of formal and informal design.

The dissertation studies the formal design of NHRIs in terms of independence (autonomy) and mandate (authority), consisting of eight aspects each. The new dataset, thus, includes information on 16 aspects of institutional design. Independence concerns the degree of freedom from control by other actors (the executive, in particular) over NHRIs, their members, and their activities (Datla and Revesz, 2013; Hanretty and Koop, 2013). Hence, it covers issues like the appointment of leadership, its security against arbitrary dismissal, and the codification and permanence of the institution. Mandate relates to issues regarding institutions' responsibilities, activities, and powers (Hanretty and Koop, 2012). It includes aspects such as the ability to handle investigations, either on own initiative or based on complaints, to participate in litigation, and to provide input in the legislative process (Cardenas, 2012, 2014).

The dissertation also introduces a new measure of the formal, legal strength of NHRIs, captured by an additive index of independence and mandate, meaning that the two aspects are perceived as independent of one another (other measures of NHRI-strength can be found in Cardenas, 2012 and Pegram, 2012).

The dissertation draws on the framework developed by Rixen and Viola (2016) in capturing change to the formal design of NHRIs in five dimensions: the occurrence, content, extent, direction, and rate and pace of change. Briefly, these aspects allow for capturing whether, how much, in what aspects, and in what relationship to time change occurs in NHRIs. Empirically, these dimensions are captured using descriptive statistics on both single features of design (e.g., appointment procedure) and the aggregated measure of formal strength.

The links between design and effectiveness

Drawing on previous studies (especially Linos and Pegram, 2017), the dissertation argues that design matters for effectiveness, especially as it structures relationships (to the government, notably) and as it makes some types of activities more likely than others. It does so by formulating expectations for both design and other, mediating, factors, when it comes to their impact on effectiveness.

Independence, in the case studies also including aspects such as budget and the integrity of the leadership, is likely to impact effectiveness through, for example, relationships with appointing actors and from aspects such as tenure and immunity, which can shape the responses from other actors, such as the executive (Datla and Revesz, 2013; Linos and Pegram, 2017; Pegram, 2012). The mandate of institutions, in the case studies including also informal activities (undertaken without a legal basis), can serve to justify activities and to guard against allegations of overreach, with previous studies highlighting complaints handling as especially important for effectiveness (Jensen, 2018; Linos and Pegram, 2017). The actual design, consisting of a combination of formal and informal features and patterns, of NHRIs is, thus, likely to impact the effectiveness of institutions.

The relationship between design and effectiveness, however, is likely to be mediated by other factors. Such factors include the general context (e.g., regime type), internal factors (e.g., staff), relationships, legitimacy, and legacy effects from the establishment of the institutions (see, for example, Cardenas, 2012; Linos and Pegram, 2017; Pegram, 2012).

Factors for explaining establishment and change

The theoretical framework for explaining the choices made by regimes when it comes to their NHRIs concern two types of choices: The first choice, to establish an NHRI (of some type), and the subsequent choices to change (or not) the design of NHRIs. By drawing on previous research on the establishment of NHRIs (given the lack of research on changes to NHRIs), the dissertation lays out a framework that distinguishes between two sets of factors, one more international and one more domestic in orientation. These factors are used in the regression analyses to explain the establishment and change of NHRIs.

These international factors include, first, the influence, in the sense of diffusion or spread (e.g., Gilardi, 2010), of peer countries. In this dissertation, diffusion is hypothesised as being especially important between African countries with a shared colonial background (e.g., Reif, 2011). Thus, the more such countries that have an NHRI, the more likely are others to also have one. Second, membership in international organisations (IOs) is also likely to affect the choices that regimes make when it comes to establishing or reforming an NHRI (e.g., Cardenas, 2003; Koo and Ramirez, 2009). Whether due to socialisation or strategic legitimation, something that the design of this study does not allow to distinguish between, it is hypothesised that regimes that are members of more IOs are more likely to choose to establish or change an NHRI. Finally, the material pressure that regimes may experience from a

dependency on international or bilateral aid, captured in this study by the amount of official development assistance (ODA) received in a given year, may affect their incentives to change their institutional landscapes, whether it is to establish some type of NHRI or to change an existing institution (e.g., Kim, 2013). This may be tied to a rational logic, especially one of strategic legitimation (or coercion, even).

The set of domestic factors are, first, democracy, as it is assumed that democracy, in general, tends to provide a more amenable governance framework for the respect of human rights than autocracy (e.g., Cardenas, 2014; Koo and Ramirez, 2009). Thus, these regimes would face lower costs than others when it comes to establishing and maintaining (and changing) NHRIs. Second, the level of respect for human rights is, similarly, taken to have an impact on how costly, or difficult, regimes find it to have NHRIs (e.g., Cardenas, 2014; Hathaway, 2003). Finally, some regimes may find it easier than others to make decisions, including on NHRIs. The most prominent theory for explaining the ease of policy change, or political decision-making more generally, is the so-called veto players theory (Tsebelis, 1995), with veto players being the political actors that need to assent to a decision (e.g., in a situation of a minority government).

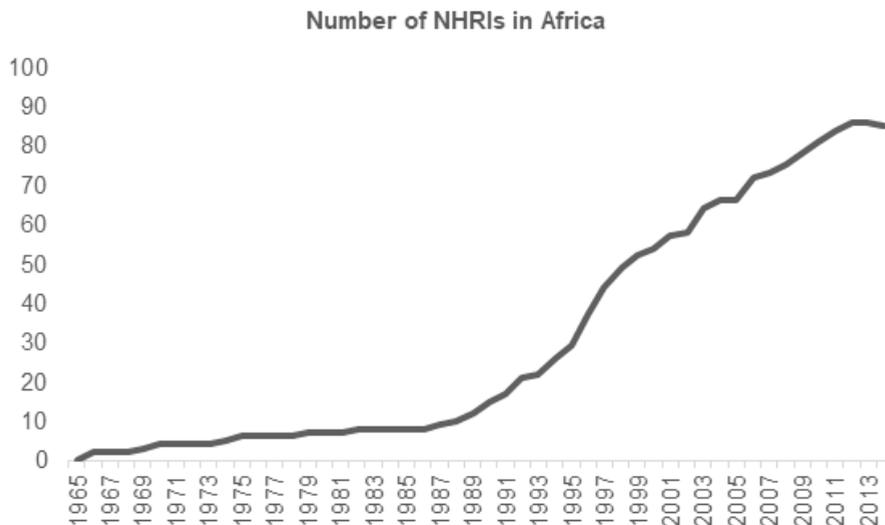
Findings: Stability and variation in design and effectiveness

The dissertation consists of four empirical chapters – on the establishment, change, and effectiveness of NHRIs – through which it tells a story of the development and trajectories of these institutions (and the countries that they are found in). I summarise some of the central findings of these chapters in the sections below.

The spread of NHRIs

The dissertation takes its start in the considerable, and surprising, increase in the number of NHRIs found in Africa. The line graph in Figure 1 below shows the variation in the number of NHRIs over time.

Figure 1: Number of NHRIs in Africa, 1960-2014



Note: The figure has been constructed using the new dataset developed for the dissertation.

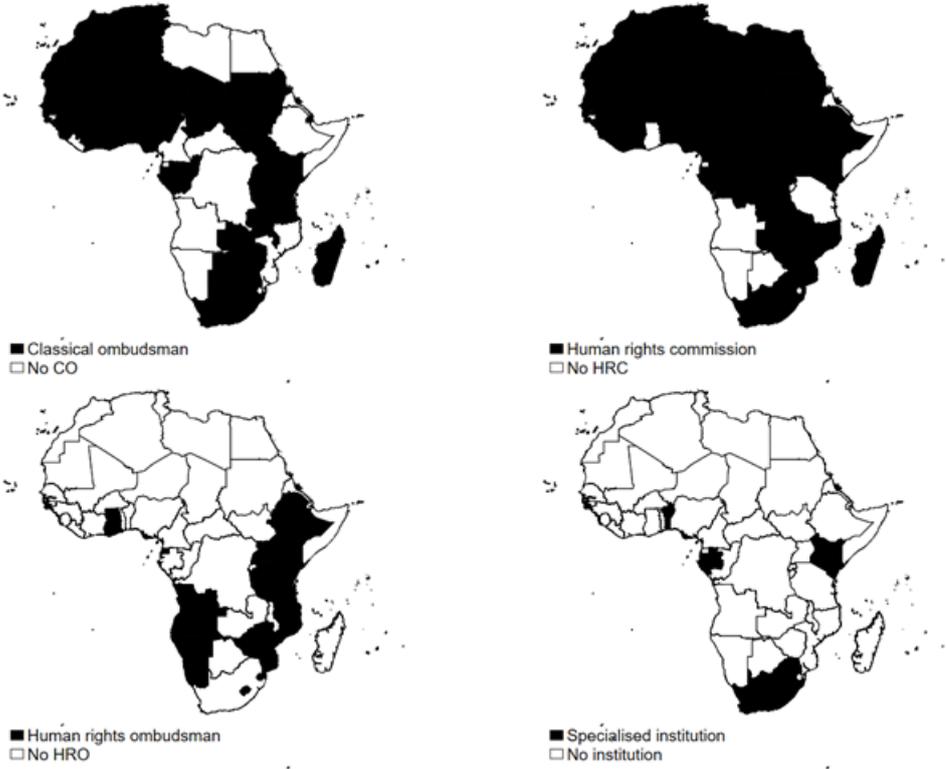
Between 1960 and 2014, 50 regimes (of 54) formally established some kind of NHRI. Even the four countries without an NHRI – Eritrea, Guinea-Bissau, Sao Tome and Principe, and Somalia – have made some commitment towards the idea of establishing an institution. Through the 1960s, 1970s, and 1980s little more than a handful of regimes – starting with Tanzania in 1966 – established NHRIs. In the 1990s, a period when many countries underwent

democratic transitions and when international organisations (especially the UN) increasingly promoted NHRIs, the spread of NHRIs took off dramatically (mirroring global patterns reported in Koo and Ramirez, 2009, and Pegram, 2010). Continuing in the 2000s and, to a lesser extent (seen against this background of saturation), in the 2010s, these institutions can now be found practically everywhere.

Based on regression analysis (found in Table 1 in Appendix 2), using logistic regression (given the binary nature of the dependent variable), on the type of NHRI established, the dissertation finds that these correlates to some extent vary according to the NHRI established. For example, democracy appears to be related to higher odds of establishing some types of institutions (notably a CO) but not others. Ties to other countries, in the form of IO memberships or diffusion from countries with a shared colonial background, are more consistently important, no matter what type of NHRI a regime establishes.

As seen in Figure 1 above, the study covers almost 90 NHRIs. Thus, some countries have more than one institution. In fact, it has become more common to (formally, at least) have two or more NHRIs (in 33 out of 54 countries) than to have just one. While the by far most common combination of types of institutions is that of a CO and an HRC, there is some variation in the choices that regimes make. The maps (Figure 2) below show the geographical patterns of the different types of NHRIs found in the respective countries at some point.

Figure 2: Type of NHRIs in African countries



Tanzania established the first African NHRI – a CO – in 1966. This was the first type of institution to be established, and until the late 1980s practically the only type. COs are found in all sorts of countries, even if they were first established by former British colonies, with the former French colonies adopting “Mediator” institutions with slightly different designs. The HRC established by Senegal in 1970 was an advisory body, and it was not until Togo established a commission in 1987 that the trend of establishing this type of NHRI began. HRCs are the most common type of institution, and the type most closely connected with the idea of NHRIs. There is, however, extensive variation in the design of HRCs, where some can only engage in promotion and others (albeit few) can make legally binding decisions. The HROs and the specialised institutions are more recent phenomena. In 1988, Uganda became the first country to establish an HRO as it gave its Inspector-General of Government a mandate that covered both maladministration and human rights. Since then, several regimes have established HROs – a type of institution more commonly seen in Latin and South America (Pegram, 2010). Only five regimes, including Kenya and South Africa, have established some form of specialised institution, such as gender equality commissions.

The independence, mandate, and strength of NHRIs

Drawing on the analytical framework on the (formal) design of NHRIs, centring on independence and mandate (combining into strength), and the new dataset used to measure this design, the dissertation provides new insights into African NHRIs through descriptive and explanatory statistical analysis.

Using various sorts of graphical representations and descriptive statistics, the dissertation maps the patterns in the design of NHRIs at the point of establishment and over time as institutions change.

As seen, there has been a general pattern of an exponential increase in NHRIs, with all but four regimes establishing NHRIs and most establishing more than one. This overarching pattern, however, is then nuanced in the dissertation as I draw on the new dataset and find that far from being homogenous institutions, varying only in their general type, they have different attributes with respect to independence and mandate, and as a result different strength.

The NHRIs in this study have already had long lives and remarkable staying power as formal dissolution is extremely rare, but they all began their life in a similar way: through establishment in constitution, legislation, or decrees (discussed above). Beyond this surface similarity, however, regimes made quite different choices when it came to their institutions. This variation spans the type and design of NHRIs and the time at which they were established. Although a handful of regimes were extremely early, as they set up institutions in the 1960s and 1970s, others were early, but slightly less so, and made their first moves in the 1980s. Still, it was in the 1990s that their establishment exploded.

On the surface, there has been convergence as regimes have made the choice to establish NHRIs. Digging deeper, however, I found that institutions differ already when they are established. This variation can be seen at all points, as regimes have always established both weaker and stronger NHRIs and sometimes the same regime has established institutions that are very different. It is also seen in how NHRIs are rarely exactly the same, but also are rarely completely different. With time, regimes appear to have established increasingly autonomous and authoritative institutions.

This trend of stronger NHRIs was seen again in the analysis of institutional change as they indeed change after that first observation of establishment. Contrary to expectations, I found that they are not static, but rather change is the rule as 51 of 88 NHRIs have changed at least once in at least one aspect (the dataset captures 86 instances in which at least one of the 16 aspects of

formal design changes). If this is the case when only focusing on 16 aspects of design, it can be fair to argue that it must be very widespread. Yet, again there was variation – now not only among but also within NHRIs – as a large group of institutions appear more resistant to change. When they did change, they were often made stronger in terms of both autonomy and authority, as they became more insulated from the executive and were given a broader and deeper sphere of activity. However, I also found variation as some experienced a different trajectory of change. Similar to how there was variation in the timing of establishment, there was variation when regimes chose to change their NHRIs, with many doing so sooner than was perhaps expected. Overall, it appears as if there has been a comparatively long period of sustained activity surrounding NHRIs where regimes first established, not only one but typically two, institutions, and then changed these institutions.

Whether looking across all regimes, all years, at establishment, or at the specific NHRIs and their trajectory over time, my argument to focus less on homogeneity and more on variation within and between NHRIs (similar to the argument made by Welch et al., 2021) appears to have been well-founded.

In addition to the descriptive analysis, I conducted a regression analysis on the variation in formal strength both within and across NHRIs (found in Table 2 in Appendix 2). The dependent variable, or outcome, is the (mean) strength of the NHRI (or NHRIs if there are multiple institutions) in a country in a given year. The findings indicate that, when it comes to the variation in the mean strength of NHRIs, diffusion, ODA, and the respect for human rights are all associated, on a statistically significant level, with higher strength whereas IO membership, democracy, and veto players have a negative association with strength (but only IO membership is statistically significant).

The effectiveness of NHRIs

The two chapters on the effectiveness of NHRIs cover Namibia and South Africa. The discussion in the dissertation includes, first, an analysis of the institutions' formal and informal design, thus covering not only, for example, constitutional provisions but also, for instance, budget procedures. Second, I investigate the effectiveness of the institutions by focusing mostly (but not only) on output, for example the number of cases handled and the input provided to legislation, as this is more directly tied to institutions than, e.g., respect for human rights. Finally, I discuss how this effectiveness can be explained by a combination of design and other factors (sometimes in interaction). Incidentally, the study also captures the consequences of design and effectiveness, like backlash and politicisation, which often arise from the relationship to government and other political actors.

Namibia has one NHRI, the Ombudsman – an HRO with an extensive mandate that covers not only maladministration and human rights but also, notably, environmental issues (Blaauw, 2009; Constitution of the Republic of Namibia, 1990; Ombudsman Act, 1990).

South Africa has four NHRIs: the Office of the Public Protector (OPP), a CO, the South African Human Rights Commission (SAHRC), an HRC, and two specialised institutions - the Commission for Gender Equality (CGE), and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRLRC). Collectively, they are known as the “Chapter 9 institutions” after the chapter in the constitution where these institutions are founded (Constitution of the Republic of South Africa, 1996; Musuva, 2009; Parliament of the Republic of South Africa, 2007; Thipanyane, 2015).

On paper, most of the institutions have extensive independence, and an encompassing mandate, but in practice things have sometimes played out quite differently. Namibia often appears as something of a negative case, as its institution by all accounts *should* be effective given its formal design, but it has often lacked the ability to translate this to practice. South Africa has a fractured institutional system with overlap but also underlap between institutions, thus there is not only forum shopping but also forum uncertainty and neglect. Most notably, there have been dynamic relationships between institutions where they can also function as failsafes for each other.

The main findings in the study on Namibia are threefold. First, I find that the Office of the Ombudsman is a human rights institution that in many ways is a CO rather than the dual mandate hybrid it may appear to be at first glance. This has consequences for the institution and its effectiveness, notably from the combination of a focus on complaints handling and a lack of enforcement power, and from an internal culture that has tended to be quite courteous to the government. Second, the previous Ombudsman, using his own expression, increasingly undertook so-called “assumed duties”, by which he meant those that fall outside of the formal mandate such as self-initiated investigations and monitoring of conditions in places of detention. This use of discretionary powers increases effectiveness, but a lack of formal powers leads to insecurities and to dependency on the interpretation by the leadership. Finally, the study finds that the institution is mostly functionally independent, but is compromised by ties to the government and by a distinct lack of resources. The government often fails to cooperate with the Office, hindering the timely resolution of complaints, and to implement its findings. Coupled with a lack of binding powers, this sometimes gives a perception of ineffectiveness. This is to some extent counteracted by a willingness and ability to be neutral and to take an independent stance on more controversial issues, such as marriage equality. In the end, however, state compliance with the recommendations of the Office is haphazard at best. Although the institution does achieve things,

like helping complainants get their pensions (which may be no less important), it appears to be hamstrung. The eventual effectiveness of the institution is patchy and often depends on goodwill rather than formalised policy. Although there have been few negative repercussions for the institution, such as politicisation or backlash (common in South Africa), there has also been comparatively little effectiveness, especially against a more ambitious standard of impact.

The chapter on the four South African NHRIs also offers three main findings. First, I find that the design of most of these institutions is comparatively strong, with rather extensive formal independence. However, the executive and the ruling party have sometimes ruthlessly used their scope for influence. In addition, the nature of the South African regime, notably the near-merger of the legislature and the executive, poses particular challenges. In this regard, it is especially the appointment procedure and the role it gives the executive that influence effectiveness and the standing of the institutions as well as the politicisation and backlash that they encounter. Second, the courts and the court system appear as one of the more important factors for safeguarding the independence and effectiveness of the institutions (especially for the OPP). The courts, including the constitutional court, have helped clarify the scope and powers of the institutions, including preventing their overreach. Finally, the examples from South Africa show the extent to which NHRIs can encounter politicisation and backlash over their work and use of powers, which may be both a condition for and an outcome of effectiveness. Perhaps due to the activity of the courts, there has been no altering of the formal design or abolishment of the institutions despite high levels of politicisation.

Summary and main findings

Previous studies have primarily focused on the homogeneity of NHRIs, seen in their spread around the globe to countries with very different contexts and in the impact of the Paris Principles on institutional design. The dissertation that this brief draws on, however, finds that there is extensive heterogeneity among NHRIs, whether in terms of their design, development, or effectiveness or in the explanations thereof. NHRIs are not all created alike, with the same capacities and functions, but rather very different, with very different trajectories and impact.

First, although practically all regimes have formally established NHRIs, I find that these institutions have been of different type and design and therefore strength. With time, a majority of regimes end up with at least two NHRIs, typically a CO and an HRC. NHRIs have also tended to become increasingly autonomous and authoritative once they have been established. There have always, however, been regimes that establish weaker NHRIs, even if they have become fewer over time. The analysis indicates that the explanations may differ depending on the choices made by regimes when it comes to the establishment of their institutions. Diffusion from countries with a shared colonial background appears to increase the odds that regimes establish a first NHRI and a CO, and the membership in IOs also tends to increase the odds of the establishment of most types of NHRIs. Other factors, whether international or domestic in orientation, do not appear to be associated with NHRI establishment.

Second, most NHRIs change, but many do not, and most, but not all, institutions become more autonomous and more authoritative with time. Although change typically concerns few aspects of design, a sizeable minority of institutions are changed more extensively. The vast majority of NHRIs that change do so in a positive direction, increasing strength and strengthening

specific aspects of design, but a minority are restrained. The patterns also show that regimes tend to change their NHRIs comparatively soon after establishment, perhaps as a consequence of an intense period of activity in terms of both establishment and change from the mid-1990s. The findings from an analysis into the correlates of the variation in the mean strength of NHRIs over time indicate that there is a positive relationship to diffusion, government aid, and the respect for human rights, whereas IO membership is negatively associated with the strength of NHRIs. Findings also indicate that regimes that are members of more IOs have higher odds than others to change their NHRIs, whereas ODA only increases the odds of more extensive change.

Finally, the variation in design is of consequence also when it comes to the effectiveness of institutions even if it is not the only factor that matters. In the two case studies, I find that formal safeguards, especially as concerns appointment procedure and enforcement powers, matter, but that they often do so in interaction with other factors. Notably, the type of regime, such as the attitude and dominance of the executive, and the court system affect the degree to which NHRIs can actually act without fear or favour and their eventual impact on both individual cases and their societies. Despite the pressure that these institutions face, whether that be a lack of resources or an overreaching executive, they have extensive discretion in their work, notably when it comes to determining the scope and focus of investigations.

The regimes in Africa have established more and more NHRIs, but the design of these institutions vary a good deal – variation that has clear consequences for their effectiveness. Although it is the ties to others, whether through horizontal diffusion or membership in IOs, that appear to matter the most for their variation and their development, their effectiveness is instead primarily affected by domestic factors, such as regime type.

Implications for research and policy

The findings of the dissertation have implications for different strands of research and aspects of policy.

First, the findings have implications for the continued research on NHRIs. This concerns *design* as the findings strengthen the argument to consider variation, especially when it comes to understanding dynamics over time within NHRIs and across NHRIs in a regime, and *effectiveness*, especially its determinants and consequences, the latter including politicisation and backlash.

Second, the findings have implications for research on democracy and authoritarianism, especially concerning the understanding of why authoritarian regimes establish institutions otherwise more closely connected with democratic rule. Although NHRIs have become enormously popular, found among all types of regimes, their reasons for establishing and maintaining such institutions may differ. Whereas some regimes, such as Sudan in 1994, appear to have established an NHRI out of insincere commitment, others, such as South Africa the same year, may have done so for credible commitment reasons.

Third, the findings may also have implications for institutional theory. Such implications may range from the conceptualisation of NHRIs and their design, where I suggest that researchers could benefit from work on, for example, counter-majoritarian institutions, to the role of interaction effects between institutional design and other factors, such as regime type, on effectiveness. Therefore, there is scope for greater cross-fertilisation where research on, for example, non-majoritarian institutions can see NHRIs as one example of a more general type of institution rather than something unique.

Fourth, when it comes to the research on international law and human rights, the findings have implications especially for the status of the Paris Principles and their formalisation and for the potential role of NHRIs as an intermediary between international law and regimes' respect for human rights. As an example, the Namibian Ombudsman has in practice taken on the role of monitoring the implementation of the Optional Protocol to the Convention against Torture, despite a lack of formal mandate. But it is not clear if such a solution, or one with a separate mechanism, would be most effective.

Finally, the analysis and its findings have implications for the politics and policy of regimes vis-à-vis their NHRIs. The evidence from the case studies indicates that it is one thing for regimes to establish NHRIs with significant authority and autonomy but quite another for them to respect their institutions. Often, regimes are tempted to restrain institutions in response to their actions (e.g., findings in investigations) after a period of politicisation and backlash. Other times, restraint may come from a lack of prioritisation. All in all, the findings in the dissertation indicate that regimes do well in designing NHRIs with significant autonomy and authority, especially the capacity to enforce their decisions, but that institutions struggle in a context of impunity or just a lack of support.

Implications and recommendations for development cooperation

In light of the main findings of the dissertation – and the implications that these might have – this report ends with some recommendations for development practitioners and organisations:

- NHRIs are important actors, on the international but especially the domestic level, but their importance and functioning is not a given, but rather something that takes concerted efforts from a variety of actors, including state, non-state, and international actors.

- It has been popular to include NHRIs in peace-agreements, especially in Africa. But for the establishment to take legal effect, the institution needs to be included in legislation, something that has proved a challenge. Especially post-conflict settings require concerted efforts of capacity-building and long-term support.
- The (formal) design of NHRIs matters, both when it comes to mandate and independence, but it is not the only factor determining functioning and effectiveness. The general conditions under which institutions operate, including the resources and support from other actors, are of massive importance.
- The Paris Principles on the establishment and design of NHRIs – highlighted in the Sustainable Development Goals (indicator 16.1.a) (UN General Assembly, 2017) – have proven to make some features of design more common, notably those strongly recommended (Linos and Pegram, 2017). But findings in this dissertation’s case studies indicate that handling complaints – a weakly recommended, or voluntary, aspect in these principles – is very important for effectiveness (a finding in line with other studies, see for example Jensen, 2018). Compliance with the Paris Principles, thus, may at best be a start towards having an effective NHRI.
- Peer networks for NHRIs on the international and regional level can be important venues, for example for transfer of knowledge, lessons of best practices and capacity-building (see, for example, Brodie, 2011). These often rely on funding from donors and may face particular challenges, especially as many NHRIs lack an explicit mandate for international activity (meaning that they may struggle to get funding for such engagement). Donors and other actors may want to pursue concerted efforts towards capacity-building and dissemination and implementation of best practices, while ensuring the ownership of NHRIs.

- NHRI are important in their own right, but their capacity and effectiveness depend not only on the institutions themselves but also on their institutional fit, in other words their place in a broader landscape. Donors should consider issues of complementarity and competition, both with other state actors and organisations and with, for example, NGOs. There is otherwise a risk that NHRI and NGOs compete over resources, including from donors, as can be seen in middle-income countries like Namibia.
- While design matters, it is not only the individual features that matter, but also how they are combined within institutions (and – something not covered in the study – possibly how aspects of design combine across institutions within a country). For example, as seen in Namibia, it may be disadvantageous for effectiveness and standing to combine case-handling with a power to only make non-binding recommendations.
- NHRI exist in a context of increasing politicisation and backlash against human rights in general (and against the institutions as such in some cases). The findings of this study, like others, showcase how difficult it is to make governments keep their hands off their institutions, despite strong constitutional protections. Development cooperation actors and donors should consider increasing their support to NHRI under pressure, including by imposing social sanctions (e.g., naming and shaming) against regimes and by providing capacity-building support and funding to NHRI.

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Appendix 1. List of interviews

Windhoek, Namibia

1. Staff member. Human Rights and Documentation Centre, University of Namibia (UNAM). November 28, 20172.
2. Staff members (two), human rights organisation. November 29, 20173.
3. Staff member, human rights organisation. November 30, 20174.
4. Lecturer, Department of Law, University of Namibia (UNAM). December 1, 20175.
5. Lecturer, Department of Political and Administrative Studies, University of Namibia (UNAM). December 5, 20176.
6. John Walters (Advocate), the Ombudsman of Namibia. December 6, 20177.
7. Senior staff member, OON. December 6, 20178.
8. Staff members (three), Office of the Attorney General. December 7, 20179.
9. Staff member, women's rights NGO. December 8, 201710.
10. Senior official, PSC. December 8, 201711.
11. Community developer. December 8, 201712.
12. Staff member, human rights organisation. December 13, 201713.
13. Staff member, international actor. December 13, 201714.
14. Staff member, international organisation. December 14, 201715.
15. Staff members, Law Society of Namibia, [written response to questions over e-mail]. May 2018.

South Africa

16. Staff member, Embassy, Pretoria. February 20, 2018.
17. Staff member, human rights organisation, Hatfield [Pretoria]. February 21, 2018.
18. Staff member, human rights organisation, Johannesburg. February 22, 2018.
19. Staff members (two), Research institute, Johannesburg. February 22, 2018.
20. Staff member, human rights organisation, Johannesburg. February 24, 2018.
21. Commissioner, SAHRC, Johannesburg. February 26, 2018.
22. Staff member, Research institute, Brooklyn [Pretoria]. February 26, 2018.
23. Staff member, DoJ&CD, Pretoria. February 27, 2018.
24. Staff member, human rights organisation, Johannesburg. March 1, 2018.
25. Staff member, human rights organisation, Johannesburg. March 1, 2018.
26. Senior official, Office of the AGSA, Brooklyn [Pretoria]. March 2, 2018.
27. Staff member, CRLRC, Johannesburg. March 5, 2018.
28. Staff member, international NGO, Johannesburg. March 8, 2018.
29. Senior official, PSC, Pretoria. March 8, 2018.
30. Senior official, OPP, Brooklyn [Pretoria]. March 9, 2018.
31. Director, research council of South Africa, Pretoria. March 9, 2018.
32. Staff members (four), children's rights NGO, Johannesburg. March 12, 2018.
33. Staff member, CGE, Johannesburg. March 13, 2018.

34. Senior official, IEC of South Africa, Centurion [Pretoria]. March 13, 2018.
35. Senior official, South African Law Reform Commission, Centurion [Pretoria]. March 14, 2018.
36. Senior official, SAHRC, Johannesburg. March 16, 2018.

Appendix 2. Regression tables

Table 1: Logistic regressions on the establishment of NHRIs

	(1) First NHRI	(2) First CO	(3) First HRC	(4) First HRO
L.Spatial lag (colonial background)	2.789 ⁺ (1.532)	28.26 [*] (40.41)	1.124 (0.630)	0.857 (1.592)
L.IO membership	1.033 [*] (0.0139)	1.034 (0.0213)	1.047 ^{***} (0.0132)	0.931 ^{**} (0.0232)
L. ODA (log)	0.948 (0.143)	0.894 (0.213)	0.853 (0.133)	1.282 (0.494)
L.Democracy (UDS Posterior, Mean)	1.858 (1.044)	4.308 [*] (2.798)	1.401 (0.860)	0.267 (0.327)
L.Latent human rights scores	0.833 (0.158)	0.815 (0.199)	0.615 [*] (0.147)	0.955 (0.529)
L.Veto players (Political Constraints Index V)	0.733 (0.878)	0.414 (0.439)	0.451 (0.606)	23.79 [*] (38.36)
time	27.96 (82.90)	17.77 (55.50)	816.6 [*] (2333.1)	0.0593 (0.224)
time ²	0.942 (0.0539)	0.947 (0.0567)	0.884 [*] (0.0483)	1.075 (0.0831)
time ³	1.000 (0.000366)	1.000 (0.000380)	1.001 [*] (0.000343)	0.999 (0.000507)
Constant	2.82e-29 (1.44e-27)	1.99e-24 (1.08e-22)	2.69e-55 [*] (1.33e-53)	4.40443e+11 (2.61813e+13)

	(1) First NHRI	(2) First CO	(3) First HRC	(4) First HRO
Observations	708	998	1039	1433
Countries	39	41	46	46
Chi2 type	Wald	Wald	Wald	Wald
Chi2	44.70	53.55	35.91	39.92
p-value for model test	0.00000105	2.30e-08	0.0000412	0.00000786
pseudo-R-squared	0.151	0.153	0.134	0.139
Log lik.	-120.8	-98.97	-126.7	-38.10
AIC	261.6	217.9	273.4	96.20
BIC	307.2	267.0	322.9	148.9

Note: Odds ratios. Standard errors in parentheses. Statistical significance: + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Table 2: Panel data regressions on the strength of NHRIs

	(1) Fixed effects	(2) Random effects
L.Spatial lag (colonial background)	7.314** (2.621)	6.458* (2.574)
L.IO membership	-0.286** (0.0983)	-0.268*** (0.0793)
L.ODA (log)	3.976*** (0.669)	3.648*** (0.630)
L.Democracy (UDS Posterior, Mean)	-0.697 (1.340)	0.449 (1.334)
L.Latent human rights scores	3.597*** (0.621)	3.485*** (0.604)
L.Veto players (Political Constraints Index V)	-2.888 (2.291)	-2.343 (2.298)
time	-9.320* (3.848)	-7.466+ (3.864)
time ²	0.182* (0.0786)	0.145+ (0.0788)
time ³	-0.00101+ (0.000520)	-0.000797 (0.000522)
Years since establishment of first NHRI	-1.048*** (0.117)	-0.673*** (0.103)
ObL.Number of NHRIs in country	0 (.)	0 (.)

	(1) Fixed effects	(2) Random effects
1L.Number of NHRIs in country	47.30*** (1.284)	48.90*** (1.270)
2L.Number of NHRIs in country	50.67*** (1.768)	50.86*** (1.767)
3L.Number of NHRIs in country	49.88*** (3.745)	51.05*** (3.719)
4L.Number of NHRIs in country	42.81*** (6.811)	47.05*** (6.518)
Constant	141.7* (60.71)	114.3+ (61.11)
Observations	1491	1491
Countries	47	47
R-sq. within	0.795	0.793
R-sq. between	0.507	0.683
R-sq. overall	0.661	0.724
Chi2 type		Wald
Chi2		5501.7
p-value for model test	0	0
F test	22.09	
Prob > F	6.37e-134	
AIC	11828.3	.
BIC	11907.9	.

Note: Standard errors in parentheses. Statistical significance: + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

National human rights institutions are important in protecting human rights but can come to function both as watchdogs and lapdogs of their governments. This Development Dissertation Brief uses multiple methods to explore why national human rights institutions are established, how and why they change, and how their design affects their effectiveness.

Nationella institutioner för mänskliga rättigheter är viktiga för att upprätthålla mänskliga rättigheter men kan i vissa fall ges auktoritet och oberoende och i andra fall begränsas av sina regeringar. Denna Development Dissertation Brief använder flera metoder för att studera varför dessa institutioner etableras, hur och varför de förändras samt hur deras utformning påverkar effektiviteten.

This is a Development Dissertation Brief (DDB), where EBA gives recent PhDs the opportunity to summarise their dissertation, focusing on its relevance for Swedish development cooperation. If you are interested in writing a DDB, please contact us: ud.eba@gov.se



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