



Loss of independence of the Colombian ombudsperson. Clientelism and horizontal accountability in a declining national human rights institution

Juan Manuel Quinche Roa

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School of Global Studies, University of Gothenburg
Pedro Arrupe Human Rights Institute, Deusto University
School of Humanities and Social Sciences, University of Roehampton
Department of Social Sciences, University of Tromsø – Arctic University of Norway

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Abstract

The international status of the Colombian ombuds institution presents a paradoxical scenario. Although the loss of its independence has been documented for almost two decades, it has always received the highest rating from the organization that assesses compliance with international standards. While this is happening, the direction of this State agency continues to be determined by a deficient procedure that gives a leading role to the government and allows the reproduction of clientelistic practices.

Starting from this scenario, this dissertation explores how the specialized offices of the United Nations, which have promoted the creation of national human rights bodies and sponsored their periodic evaluation, can act in a more proactive manner in the face of ombuds institutions that are taken over by politicians disinterested in human rights.

By presenting an analysis of the profiles of ombudsmen in Colombia, it is shown how, over the last twenty years, this institution has generally ensured both bureaucracy and enabled horizontal accountability to a political elite. A dynamic that openly contradicts the provisions of international standards, as demonstrated by the author based on ethnographic work carried out during four years within this institution, a review of the archives of its human resources department, and a comparison of what has happened in Colombia with other countries of the Andean Community that have maintained election mechanisms more consistent with international standards.

At the end, it is recommended that multilateral organizations redesign the tools for evaluating and monitoring national human rights institutions, in order to allow an approach that offers a real diagnosis of each of them and consider better ways to address the performance of those that are highly politicized.

Kew words: ombudsperson, national human rights institutions, clientelism, Colombia, horizontal accountability.

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Acknowledgments

I wrote this document with the pleasant company of a book written by Gabriel García Márquez entitled *The Autumn of the Patriarch*. It would have been difficult to find a more timely novel. That is why I begin by thanking this Colombian author and sharing a fragment in which he describes the main character of his text:

he would wander all over the country with his strange armadillo-like gait, with his trail of sweat, with his overdue beard, he would appear unannounced in any kitchen with that air of a useless grandfather that made the people of the house tremble with fear, he would drink water from the jar with the serving bowl, he would eat in the same cooking pot, scooping the prey with his fingers, too jovial, too simple, without suspecting that this house would be marked forever with the stigma of his visit (Márquez, 1999, p. 103).

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Abbreviations

CMDPDH	Mexican Commission for the Defense and Promotion of Human Rights
ECOSOC	United Nations Economic and Social Council
EWS	Early Warning System
FARC-EP	Revolutionary Armed Forces of Colombia - People's Army
GANHRI	Global Alliance of National Human Rights Institutions
IBA	International Bar Association
NHRI	National Human Rights Institution
NGO	Non-governmental Organization
NHRC	National Human Rights Commission of Mexico
OHCHR	Office of the United Nations High Commissioner for Human Rights
OI	Ombuds Institution
SCA	Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions
SINDHEP	Union of Human Rights Defenders of the Colombian Ombuds Institution
UNGA	United Nations General Assembly
UNDP	United Nations Development Programme

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1. Introduction

One of the most vivid memories I have of my time serving in the Colombian ombuds institution dates to September 2020, when a new administration started. By that time, four years had passed since the previous direction, therefore, the President of the Republic had to nominate three candidates among whom the House of Representatives should chose the *National Ombudsperson* (Colombian Political Constitution of 1991, Chap. 2, Art. 281). When the day arrived, was elected Carlos Camargo Assis, the cousin of the former director of the Conservative Political Party, which at that time held the Vice Presidency of the Republic. The seemingly political affinity of the chosen candidate was not the only problem. Prior to the elections, there had already been previous media scandals due to the composition of a list made up of people with no human rights experience (Caracol Radio, 2020).

In the case of Carlos Camargo, the surprise came not only from his personal background, but also from the appointments he began to make. In some regional offices, he appointed former candidates from the departmental elections that had just passed, while some of the directors he designated at the national level came from the government in office or from its political party (*En la mira Defensor del Pueblo*, 2021; Pérez and Ávila, 2022).

Unfortunately, this dynamic was not entirely new. The apparent payment of political favors through the institution that should watch over human rights seems to be, on the contrary, a long-standing pattern that also affects the rank and file of the workers, as could be seen in the pronouncements made by the unions against the previous ombudsman.

I belonged to the Union of Human Rights Defenders of the Ombuds Institution (SINDHEP for its acronym in Spanish), which openly condemned the former ombudsman for the personal affectations suffered by the workers due to the "clientelist debts that seemed unpayable" (SINDHEP, 2020). Another labor union also denounced him, arguing that there was a "labor massacre of public defenders made by the Ombudsman to attend 'political clientele'" (Asociación Nacional de Empleados de la Defensoría del Pueblo, 2022). While the remaining union, that currently has the largest number of members, at that time requested a constitutional

change in order “to keep the Ombuds Institution away from clientelism and politicking” (Asociación Nacional de Servidores Públicos de la Defensoría del Pueblo, 2020).

These requests should be carefully considered, as workers always deploy the institution’s essential mission on the field. Indeed, civil servants deploy actions with a high level of discretion through which the State becomes real in the daily lives of its citizens (Lipsky, 2010, p. 221; Martínez, 2014, p. 15). Therefore, the extent of concepts such as clientelism, patronage and bureaucracy must be traced not only by identifying the politicians and their cronies within the entity, but by analyzing how their presence can actually jeopardize the duties that international standards attribute to the ombuds institution. Something that I started doing four years ago, when I began an ethnography while working in this public entity.

I did it as being both a civil servant and a union member, considering that from SINDHEP we tried to draw the attention of the Congress and other State offices at the national level. Most recipients of our messages remained passive in the face of the progressive deterioration of the place where we worked. When the board of our union - of which I would later be part - became aware of this, it tried to ask for international attention to be paid to what was happening inside the institution (SINDHEP, 2021).

For us, the reasoning was relatively simple. If there were appointments that did not guarantee that the national human rights institution would remain independent and autonomous from politicians in government and the legislature, there was an explicit failure to comply with the principles endorsed by the United Nations General Assembly (UNGA, 1993, Annex). But our case did not receive the expected attention, as has happened in other countries in the region where similar calls have been made, such as Mexico (CMPDH, 2022).

Despite being a relatively explicit and reiterative fact, usually no proactive measures are taken abroad. Not even from those agencies that have promoted the creation of these institutions. The fact that United Nations specialized offices, such as the United Nations Development Program (UNDP) and the United Nations Office of the High Commissioner for Human Rights (OHCHR), continue to strongly encourage their creation (e.g. through the Goal 16. Peace, justice and strong institutions *see* UNDP et al, 2023), makes it even more surprising that the absence of proactive action continues when the ombuds institutions have been undermined.

1.1. Problem formulation and justification

There is one harmful practice that might be essential to understand the problems outlined above. To succeed in his election, the current ombudsman and many of those who have held the same office may have appointed senior public officials close to the politicians involved in their election process. That is how family members from congressmembers and advisors to the president might have arrived at the institution; a dynamic that unfortunately has only been reported in the media in different years (Revista Semana, 2004; Salinas, 2019; Pérez and Ávila, 2022).

It would be naïve to reduce this practice to a general notion of clientelism in the political realm, where it is understood as a strategy of partial political mobilization in which public resources are put to particular use with a view to winning elections and building political support (Roniger, 2004, p. 354). Clientelism in Colombia is conceptualized in a more complex way, insofar as it entails a value system that privileges loyalties and sustain structures where vast networks of social relations take place based on debt and favors, influencing not only how a job is obtained but how it is deemed desirable to be performed (McFee, 2009, pp. 192-194).

It is therefore convenient to observe what the reproduction of clientelism means in a human rights institution that, despite being funded by the State, is supposed to *independently* oversight and react to the performance of other State agencies.

It would be hard to believe that the change of managers among the high positions of the presidency of the republic and the ombuds institution, will accomplish the ‘guarantees of independence and pluralism’ referred in *the Paris Principles* – as came to be known the international standards regarding the creation and operation of this kind of institutions (UNGA, 1993, Section B of the Annex). In fact, that improper election procedure seems to be the departure point for the clientelist practices that follows between the candidates, the national government, and the regional politicians. Especially when, rather than favoring a balance of power, the practice seems to be reflecting an interest in guaranteeing public positions and not destabilizing other State actors (Cardenas, 2014, p. 56).

As this appears to be an explicit and persistent dynamic, it would be expected that this anomaly could cause a wide range of reactions at different levels, but it has not been like that.

In the academic field, although foreign scholars have stressed that the adequate appointment of the ombudsperson is a requirement to have independent national human rights institutions in the Andean region (Ungar, 2004, p. 168; Reif, 2020, p. 560), there are not South American researchers who have developed this idea. Instead, they have placed more emphasis on how ombuds institutions can reduce corruption in other public offices (Moreno, 2016, p. 135), following one of the first and long-standing academic practice, which focused on the role of the ombudsperson as “a bureaucratic control mechanism” (Hill, 1974, p. 1076).

In general, the influence of existing election mechanisms on the deterioration of the institution of human rights have also been trivialized at the national level. Rather than focusing on its core mission, journalist often allude to this election as a competence between political parties. Broad sectors of the public opinion have failed to describe the transcendental nature of a position that should advocate for human rights in Colombia, a country that, besides being the second most unequal in South America (Oxfam International, 2021), has a long-standing armed conflict, and the highest homicide rate of human rights defenders in recent years (Front Line Defenders, 2022, p. 5).

The citizenry, for its part, has recently become more proactive. Due to the difficulties in achieving reforms through Congress and other formal channels, a part of civil society has recently taken a more active role. They proposed alternative candidates when the period of the former ombudsman expired (Defendamos la Defensoría, 2020), denounced clientelist practices in the institution, and even requested the resignation of the current ombudsman due to his biased actions (Redacción Política, 2021). But this has not being enough. The ombudsperson generally does not make better appointments, nor resign (Rodríguez, 2015), and even less seeks a reform for the institution he or she leads.

In this scenario, a more active role would be expected from the international community, which, however, has been notable for the lack of actions that attack the problem at its root. They do not pay enough attention to the election mechanism, even if this bleak outlook continues to spread over Colombia's ombuds institution, as it has apparently also happened in other countries of the region, such as Mexico and Venezuela (CMDPDH, 2019, p. 1; Reif, 2020, p. 560).

The paradoxical issue is that agencies from the United Nations have actively promoted the existence of national human rights institutions (NHRI) under completely different assumptions. One of the main missions of OHCHR since its creation in 1993 has been to support the creation

and strengthening of NHRIs to have independent bodies that seek to guarantee human rights from the national level (Cardenas, 2014, pp. 42-44). But despite the effort that has indeed been put into their establishment in different countries, little attention has been paid to their proper functioning over time.

An important part of the accompaniment has been done by means of other international actors that act insufficiently and even contradictorily. Probably one of the clearest examples is the Global Alliance of National Human Rights Institutions (GANHRI), a global network that since its creation, that also took place in 1993, conducts periodic assessments developed under the auspices of, and in cooperation with the OHCHR, to determine the extent to which each ombuds institution meets international standards (GANHRI, 2023, Art. 11.1).

The contradictory decisions of this entity can be illustrated by the Colombian case. Even if this State follows a procedure of election that clearly does not provide “all the necessary guarantees to ensure the pluralist representation of the social forces (civil society) interested in promotion and protection of the Human Rights”, as it is stated at the bare beginning of the Paris Principles (UNGA, 1993, Section B of the Annex), the GANHRI has always given it the highest rating. Moreover, in recent years the members of this global alliance have given its chairmanship to Colombia's most recent ombudsmen, including the current one, which has led many of the scandals described in this introduction (*Ombudsman of Colombia appointed for position of GANHRI Chairperson*, 2021).

When perceptions and actions do not match reality, something must change. This refers not only to the legitimacy of national-level human rights institutions, but also to the consistency and credibility of the performance of the multilateral agencies that promote them. For this reason, it is necessary not only to present a diagnosis of the problem derived from the permanence of clientelism, but also possible alternatives to overcome it with the support of multilateral agencies. This is a pending agenda to which this research aims to contribute.

1.2. Research question and aims

As was said before, my personal experience has been useful in developing both the topic and the questions selected in this regard. From this point of view, I intended to formulate objectives

that would make it possible to propose alternatives to a problematic scenario that I witnessed as a civil servant (Maxwell, 2019, pp. 219-221). Considering this appreciation, this thesis departs from the following research question:

How could the Office of the United Nations High Commissioner for Human Rights act more proactively in the face of ombuds institutions that are taken over by a political elite disinterested in human rights, as is the case in Colombia?

A concern that can be properly addressed if the following secondary questions are also attended:

- What are the problems of the current legal framework that regulates the operation of the Colombian ombudsperson considering international standards?
- How is it possible to identify a potential takeover of the Colombian ombuds institution by the local political elite?
- What consequences can GANHRI consider for those ombuds institutions where the principles of autonomy and independence are constantly omitted?

1.3. Argument and document structure

Based on the impossibility of achieving changes at the national level, I argue that multilateral organizations should address in a committed manner the capture of the Colombian ombuds institution by politicians since 2003, as the reproduction of clientelistic practices continues to erode the independence of this State agency with a human rights mandate.

The structure of this document is presented below. The theoretical approach of this research is set out in the following chapter. After making a conceptual distinction between NHRI and ombuds institutions, I expose how this research is framed in the theoretical perspective that Professor Marie-Bénédicte Dembour calls *Protest school* and the concept of a *self-restraining State* when it comes to analyze the Colombian ombuds institution.

After exposing the different research methods deployed for four years, the fourth chapter explains the origine and decline of the ombuds institution in Colombia. I expose why its creation set a benchmark in South America, the disregard of international standards since its beginnings and why it has been very hard to change its design.

In the fifth chapter I present the ombudsperson election procedures that were created in other countries of the Andean Community -i.e. Peru, Ecuador and Bolivia-, their challenges and advantages in light of the Colombian case.

The following section propose alternatives for a more proactive action by the OHCHR. After describing how it has worked to date, a reconfiguration of its actions is proposed to make both the OHCHR and the GANHRI more consistent with their discursive objectives. This chapter is followed by conclusions and some final recommendations.

2. Theoretical framework

In Colombia, it is common to find a recurrent malpractice that consists of employing the concepts *ombudsperson* and *National Human Rights Institution* as synonyms. As Raymundo Gil Rendón has recognized, the first comes from the Swedish figure of the *ombudsman*, who was initially a representative of the king that sought to protect his subjects and assure them impartial justice in the 16th century. Further on, in the 1809 Constitution, the same country created the *justite ombudsman*, a ‘modern’ version of this figure. This person was elected by a representative body in order to fulfil two main functions: to supervise the functioning of the civil service, and to defend both the public rights and the legitimate interests of the citizenry vis-à-vis the administration (Gil, 2002, pp. 13-17).

As will be recalled in the fifth section, from the middle of the twentieth century the nascent United Nations will begin to internationally recognize the importance of this figure. By that time, the ombudsman was acquiring more importance as it was expanding through the Scandinavian region and other Western countries. And it was from the collection of these experiences– and appealing to the jargon that was becoming the norm in international relations, that the United Nations Economic and Social Council (ECOSOC), started referring to them as *National Human Rights Institutions* (GANHRI, no date).

Currently, these institutions are defined by the OHCHR as “State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are part of the State apparatus and are funded by the State” (OHCHR, 2010, p. 12). Is under this assumption, that Human Rights Commissions and ombuds institutions – such as the *Defensoría del Pueblo de Colombia* [Colombian People’s Defender’s Office], are considered to be a type of NHRI (OHCHR, 2010, p. 15).

However, for Linda Reid, who is one of the researchers who has extensively documented this subject, an important distinction should be made:

only independent national human rights ombuds institutions and national human rights commissions and institutes with comprehensive human rights mandates can be classified as

NHRIs because they are the only domestic human rights institutions that can and do achieve full compliance with the Paris Principles (Reif, 2020, p. 153).

Is in this sense that the Colombian ombuds institution exposes a paradoxical scenario, as it indeed has a human rights mandate but does not fulfil the international standards embedded in the Paris Principles – despite being recognized with the maximum status by the GANHRI. Therefore, based in one of Reid's assumptions, this dissertation refers to it only as an ombuds institution, which resulted from the appropriation of international models that, as will be seen below, were reshaped by the local political context.

2.1. The protest school and the institutionalization of human rights

In 2012, Professor Marie-Bénédicte Dembour stated that people conceive of human rights in very different ways. After doing a close reading to the academic literature, she proposed four schools of thought, one of which is the *Protest school* that underlies the theoretical approach of this research. Academics belonging to this group believe that human rights should be used to address legitimate claims on behalf of vulnerable groups, which does not necessarily mean that creating new institutions is the most appropriate way to achieve this ideal (Dembour, 2012, pp. 3-6).

Especially if one considers that laws portraying human rights values and promoting the NHRI model -such as those that created and reinforced the ombuds institution in Colombia- could be taken by a political elite and even lead to a bureaucratization of the State that is also based on human rights discourses (Dembour, 2012, p. 6; Cardenas, 2014, p. 32 and 55).

Therefore, and considering that institutions are born from struggle and bargaining – as the creation of the *Defensoría del Pueblo* under a national constituent assembly reflects, it should be considered how they might represent the power of those involved in its creation (Campbell, 2004, p. i). An understanding that transcends formal legal instruments, such as a political constitution, a United Nations resolution, or some articles coming from the local legal system.

Under this perspective, it is necessary to go beyond the juridical dimension of human rights, which means the mere incorporation of rights into the law or the inclusion of institutions such

as the ombuds offices, in order to consider other political and societal conditions (Wolfesteller, 2017, p. 233).

This is not to avoid thinking about the law at all, but to consider the implications of how these institutions are being portrayed and shaped. Julia Dahlvik *et al* give an example of one way of doing it. By examining the experience of the Austrian ombuds institution, these authors identified how the election procedures contemplated in the law allowed for practices strongly influenced by partisan appointment. As the three major political parties had the right to propose the ombudspersons, there could be found party-related positions in the institution that was supposed to speak independently in favor of human rights (Dahlvik *et al*, 2020, pp. 198-200).

Although they may share some traits, the mechanism in Colombia might be strongly attached not just to the Congress, which make the election of the ombudsperson, but to the government that propose the candidates. Therefore, the influence of the President of the Republic must also be considered within the framework of this research. Not just because he or she might belong to another political party, but because as head of State, head of government and supreme administrative authority, this person has the responsibility to guarantee both the economic stability and the independence and autonomy of the ombuds institution.

2.2. Clientelism and horizontal accountability in an ombuds institution

One of the authors that Marie-Bénédicte Dembour included in the *Protest school group* was the British political scientist Neil Stammers who in 2009 critically observed the absence of research regarding the institutionalisation of human rights. In the book *Human rights and social movements*, he states that uncritical proponents had seen it as largely unproblematic and by doing so they had eluded the relation between this institutions and power. In his view, human rights can be used to challenge to power, but when they are institutionalized, roles can be changed to the extent that rights can actually become a tool of power (2009, pp. 3 and 102).

If this were to happen, and these institutions were effectively instrumentalized by the powerful sectors, it would be necessary to ask what would happen to the powers attributed to them by United Nations representatives, such as that of ensuring the accountability of governments

(Pillay, 2009; OHCHR, 2010, p. 60). According to a report prepared by ECOSOC consultants, the concept of accountability refers to "the oversight over fulfillment of responsibilities of public sector officials and the checks and balances on the exercise of political power", and can take three forms: vertical when there is a principal-agent relationship, such as that seen in elections between voters and governments; social when there is control exercised by civil society organizations and independent media over official sectors; and horizontal, when it is performed by a network of institutions exercising control over the different branches of power (Ocampo and Gómez, 2014, p. 9). When this is addressed to the government from national State institutions, it is expected to be carried out by independent agents, and in this sense the figure of the ombudsperson would be *formally* - i.e. in legal instruments - one of those actors in charge of guaranteeing horizontal accountability.

Sonia Cardenas made a strong statement regarding the relation between the existence of NHRI and the accountability of other actors that are also part of the State. Her argument will be a main input for the analysis proposed in this dissertation. Cardenas builds on the concept of horizontal accountability to observe how a NHRI might enable accountability without necessarily destabilizing other State actors (Cardenas, 2014, p. 56).

How can this scenario be reached? When in effect the ombuds institutions blur the three dimensions of accountability, namely: the *responsibility* of public power holders for their actions, how they *answer* when they commit human rights violations, and how they can be subject to *enforceable sanction* (OHCHR, 2014, p. 4). For the Colombian case, if the so-called NHRI is a bridge that allows for closer links between different State actors that should act independently; if it remains silent in the face of human rights violations committed, for example, by the government; or whether it recognizes officials coming from the executive branch as legitimate actors to work -simultaneously, through an intermediary or subsequently- in the ombuds institution, these dimensions are clearly blurred.

And when this happens, paradoxical scenarios take place. For example, despite an inability to ensure horizontal accountability on the part of these biased institutions, those in charge of them continue to elaborate discourses around human rights and the United Nations declarations to refer to the actions of other branches of power. The existence of these situations allows Cardenas to argue that some ombuds institutions could deploy *strategic emulation*, under which States demonstrate the adoption of international standards and external obligations, while they deploy interpretative frameworks that may legitimize other State actors (2014, p. 56).

Considering that this might take different models depending on local circumstances (2014, p.9), her ideas might help to understand how NHRIs could change according to a dynamic political process. For instance, “NHRI can be created with good intentions and become highly politicized over time”, even going as far as to reinforce impunity (Cardenas, 2014, pp. 13 and 345), as seems to have happened in Colombia, where the ombuds institution was created with the best of intentions after a series of peace agreements with rebel groups in the 1990s, and then became increasingly instrumentalized by traditional politicians, as will be discussed in Chapter 4.

In the case of the Colombian ombuds institution, its *politicization* has grown enormously over the last twenty years, with this concept being understood as “the substitution of political criteria for merit-based criteria in the selection, retention, promotion, rewards, and disciplining of the public area” (Peters and Pierre, 2004, p. 2). This could have occurred thanks to different formal mechanisms. One of the most obvious of these is that enshrined in the 1991 Political Constitution, according to which the head of the national government uses his prerogative to present a slate that guarantees the arrival of an ombuds person who was previously one of his former officials or a member of his political party instead of a human rights defender.

But politicization can also come from the representative body that chooses among the candidates, i.e. the House of Representatives, composed of politicians from the 32 departments of the country. If congressmembers are also interested in appointing their political partners in the ombuds institution, the politicization is also strongly influenced by a representative body that can also make use of the legal power to stop legislation that may differ from their preferences (Gerber *et al*, 2005, p. 28), such as a change in the election mechanism of the ombudsperson.

This is a dynamic that can exist because of the large number of management positions in the Colombian ombuds institution. This is a fundamental variable in understanding the existence of clientelism, i.e. the private appropriation of official resources towards political ends in “a value system that privileges loyalties and comes to be within social and political structures that comprise vast networks of social relations based on debt and favors” (McFee, 2009, p. 194).

A vast network can only be secured with a vast designation power. This differs greatly from what happens in many European countries, such as Sweden or Austria, which elect ombudspersons specialized in different fields through various mechanisms. Or what happens in countries like Spain where, on the one hand, an ombudsperson is chosen at the national level

and on the other hand, some regional ombudsmen could be chosen in some autonomous regions through other electoral bodies (e.g. the one in the Basque Country). Unlike them, in Colombia an ultra-powerful ombudsman is chosen, who can then choose 43 regional ombudspersons throughout the national territory and 18 specialized ombudspersons at the national level.

In fact, clientelism could also be a reason to explain why the number of offices and management positions in the Colombian ombuds institution has grown disproportionately. Their creation might be supported by discourses related to human rights, but not necessarily the way of acting of those who reach managerial positions. In fact, the interpretative framework of clientelism also makes it possible to understand how the discourse of the managers of an ombuds institution can also distance itself from the interests of citizens (Leal and Dávila, 2010, pp. 347 and 356). This is a long-standing value system, highly adaptable and camouflageable in the circumstances that allow the creation of new institutions, even when they converge in the pretended halo of independence and rights.

3. Methodology

Over the years, a stereotypical image has been built around anthropologists. They appear dressed in pastel shades, spending a period of time in a scenario where they deal with some ancient material record or share a space mainly habited by natives. It is an image commonly established since Malinowski's milestone work in New Guinea (first published in 1922), that has been fortunately criticized since the second half of the twentieth century, when the political implications of anthropological work were deeply scrutinized considering -among other things- the colonial origins of the discipline (Lewis, 1973, pp. 583-584).

This critical moment led to important changes in the epistemological and methodological arenas. *The otherness*, commonly labelled as the focus of anthropology, also modified its stereotypical image. Now the discipline was not focusing primarily on members of what had been labeled as traditional communities, such as indigenous peoples living in the rural areas. It was then possible to consider those new actors occupying administrative positions in the cities, such as *the bureaucrat*: "a new informant, now powerful, strange", who "does not respond to the paradigmatic figure of otherness: in appearance he is not vulnerable, he is not subaltern" (Jaramillo and Buchely, 2019, pp. 13-14).

The beginning of the *anthropology of the State* was then established. Within it, the State started to be considered as an heterogenous non-unitary entity, that should be analyzed according to different cultural contexts and the intersection between local, regional, national and transnational phenomena (Gupta, 2015, pp. 127-128). This approach, which has been widely adopted in South America (Shavelzon, 2010, pp. 74-77), has allowed some anthropologists working in Colombia to deploy methods to study our State as a result of power and domination struggles between actors from different social contexts (Martínez, 2014: 1).

In the following I present the methods used in this research, which in fact is framed within the approaches proposed by the anthropology of the State.

3.1. The review of archives

It would not be possible to trace the political takeover of the ombuds institution without paying attention to its origin. This could be done by reviewing who proposed this figure in 1991, when the last National Constituent Assembly took place in Colombia. It was therefore necessary to both identify how specific actors defended the creation of the ombuds institution and understand the role it was expected to play within this State. To address this need, between March and May 2022, I conducted an archival review at the Luis Ángel Arango Library in Bogotá D.C. -the capital of Colombia- where the archives of the national assembly are kept (Banrepcultural, no date).

This archive review also strengthened the regional analysis. Colombia was the first South American country to adopt the figure of the *ombudsman* – originally created in Sweden (Riksdagens Ombudsmän, 2023), in a constitution signed in July 1991, i.e. three months before the Paris Principles were subscribed. If the *Defensorías del Pueblo* in the neighboring countries were created later, what differences can be found in the ways in which they meet international standards?

To consider this inquiry, which is closely linked to the secondary questions, I also reviewed the laws and administrative acts regarding the creation and modification of the ombuds institutions in other countries that also belong to the Andean Community -i.e. Peru, Ecuador and Bolivia (Comunidad Andina, 2020). This allowed me to consider the differences between the institutional designs adopted by four countries of the region.

In a hypothetical scenario, if all these different models respect in varying degrees the international standards, it could be expected that this would be reflected in the assessments made by the GANHRI in cooperation with the OHCHR. To confirm if this was the case, it was also considered necessary to review the documents published by this Global Alliance containing the periodic evaluations of the existing ombuds institutions in those countries.

This was not just a matter of comparing State institutions based on different laws and administrative acts. To go beyond the formal-legal scenario and enable a socio historical analysis, I also paid attention to what was happening in the political life of the country when the formal instrument was being implemented. As I did in Colombia, I also paid attention to the workers of the institutions. Therefore, I consulted their pronouncements regarding the design and election of the ombuds institutions. Most of the time they were available on the web, but on a few occasions, I also had to write to the unions to request these documents. Contrasting

these sources, enabled me to make distinctions that went beyond the “pure black-letter comparison of legal rules, concepts or systems”, in order to “take into account the socio-economic and historical context of the law” (Van Hoecke, 2015, p. 16).

Having said this, I would like to refer to the last archive review that I did for this research: the collection of documents belonging to the Colombian ombuds institution. More specifically, I searched for those documents related to the creation of high-level bureaucracy, such as administrative acts regarding new regional or national offices, management appointments over periods of time, and the resumes of managers. Those are supposed to be public official papers; however, they were not always available and, in some cases, were also very difficult to find.

To illustrate this problem, I would like to recall what the North American sociologist Gary Spencer said when he reflected on his research on the senior officers established in a United States military base:

“Given the efforts by the bureaucracy to protect its public image and by the bureaucrat to protect his individual career chances, it is easy to see why it is difficult to carry out independent research on questions which are controversial” (1973, 95).

To deal with this scenario, Spenser shared four strategies “for obtaining data from institutions under conditions of hostility and mutual suspicion” (1973, p. 99).

One of those was the maximal utilization of available documents. Under his perspective, if I wanted to analyze, as I do in the following chapter, if the current directives are keener to the political affairs than to the human rights matters of the country, one of the inputs was their CVs, as those usually reflect their studies and working experience. According to the Colombian law, these should be posted in a public website (*Administrative Department of the Civil Service, Decree 19/2012, Art. 227*), however, this was not always the case, so I had to formally request this public information.

Something similar happened with other data I wanted to get. The information was not always delivered for different reasons, for example, the relevant office referred me to an internet link where the requested data were not available (Human Talent Subdirection, 2023) or even asked for more time and then just remained silence even if this was prohibited by law (Human Talent Subdirection, 2024). Therefore, some of their replies, or absence of them, were followed by other communications signed by me, stressing the term and legal obligation to them and other

authorities. For instance, in the absence of a response to a request concerning regional ombudspersons, the intervention of a specialized office of the Attorney General was requested and, as the silence continued after its intervention (Procuraduría General de la Nación, 2024), a legal action was also filed (Juzgado Treinta y Tres de Ejecución de Penas y Medidas de Seguridad de Bogotá, 2024). After notification of the latter, I was able to obtain a response (Paz, 2024).

3.2. An ethnography within the Defensoría del Pueblo de Colombia

This research is also based on ethnography, a social anthropological research method that aims to analyze social behaviors through observation and in-depth interactions, while promoting the reflexivity of the researcher and the denaturalization of links that are generally taken for granted (Jaramillo and Buchely, 2019, pp. 12-13). As the ethnographer could play different roles, in this case I had one as a civil servant who, while performing the duties set forth in the law and the functions manual, was also both experiencing and thinking about the existing links between managerial positions in the ombuds institutions and politicians.

As part of the ethnography deployed in the ombuds institution, I also rely on the different material that I collected for a four years-period that I spent in this institution, which includes news, photos and the fieldwork notes. The connections between those sources enabled me to distinguish the different ways in which the lack of independence was being deployed indoors.

As Spencer has said, the best way to access research data in situations where bureaucracies make it difficult to obtain is through participatory techniques (1973, p. 99). One of these ways of working can be the participant observation, a non-directive technique for deploying ethnography, that according to Guber allows the researcher to become closely acquainted with a group over an extended period, while systematically and carefully observing what is going on around (2001, pp. 15 and 55). I applied it while I was part of informal meetings with co-workers, labor unions assemblies, and meetings with non-governmental organizations' (NGOs) members that criticized -sometimes openly and others in a personal way- the ombudsperson profile and how the institution was working.

By adding myself to the critical statement made by the British anthropologist Tim Ingold, I also consider that, in some cases, the word *ethnography* has the same ‘slavish’ adherence to the protocols of positivist methodology. This was a statement made by this author, while he was alluding to the tendency of some people who identified themselves as ethnographers that did participant observation to provide specific data on the number of persons spoken to, the time spent talking to each of them and how they were selected (2014, p. 384). This research does not attempt to do so. Moreover, it strongly relies on the tools given by ethnography in its double sense of approach and method (Guber, 2001, p. 12), to both dialogue with the critical voices that are still within the entity's workforce and recall the inputs they have done in different periods of time – even when I was not there.

3.3. The biographies of bureaucratic elites

In the first chapter of the book *Bureaucratic ethnographies. A glimpse at the state construction in Colombia*, Jaramillo and Buchely affirm that bureaucracy consists of structures, networks and people that must be analyzed as bureaucrats beyond the functions attributed to them by law (2019, p. 15). The functions change considerably when you are an ombuds institution manager. Those are considered civil servants in the law, but they belong to a high-hierarchy section within the structure of the institution – i.e. at the upper positions of the organizational chart, were they have more visibility and greater decision-making capacity.

As these people have a leading role in deciding how the ombuds institution acts, I paid close attention to their political origins and what they had done before coming to this State agency. This biographical reconstruction had to be delimited according to the interest of the research; therefore, it did not privilege personal documents such as letters or diaries (Panaia, 2004, p. 51). Conversely, it will mainly focus on their resume, which is generally available in the official channel of the Administrative Department of the Colombian Civil Service. When there was insufficient information, it was supplemented with other secondary - such as news and political party communications - regarding their previous studies and work experience.

Therefore, besides the current ombudsman, the last part of the following chapter focus its attention on the profiles of those who are part of the extensive bureaucratic apparatus that he controls. This includes: The individuals that have been ‘Regional Ombudspersons’ in one of

the forty-two decentralized offices that currently exist (Human Talent Subdirection, 2024) and those that were working in one of the eighteen ‘Specialized Ombudspersons’ on February 17, 2024, according to the official website of the entity (*Directorio de dependencias*, no date). These are the profiles around which it is expected to discuss the suitability of the managers that have resulted in the Colombian ombuds institution following the implementation of a deficient election mechanism that has not changed since 1991.

4. The Colombian ombuds institution and its decline

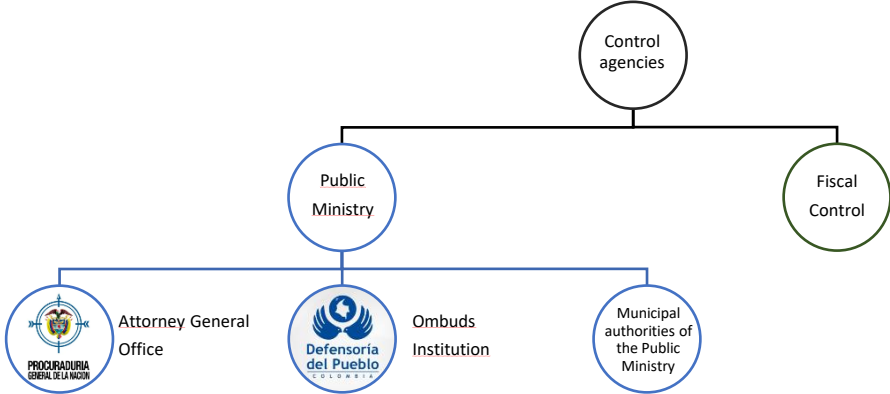
4.1. The benchmark for NHRIs in South America

After Guatemala, Colombia was the second country in introduce an ombuds institution in Latin America and the first to do so in the south of the continent (Yakimavicius, 2017). This happened through a constitutional assembly that took place in 1991, when seventy popularly elected constituent representatives restructured the State.

It was then decided that there were going to exist *Control Agencies* which were in charge of controlling other public entities and ensure the effective realization of the general interests of society (Quintero, 2011, p. 107-111). These were divided in two: the *Fiscal Control*, which in turn includes those entities that looks after the proper resources management in the public administration, and the *Public Ministry*. The latter has been mentioned in Colombia since the 19th century, when, following a north American model, some of the politicians deemed it necessary to have a ministry to promote national interests and oversee the conduct of public officials. In 1830, the figure that would lead it was created: the *Attorney General*, who was a person elected by the president until 1853, when it was considered that this procedure did not guarantee its independence (Malagón, 2017, p. 76-80).

More than a century later, it was decided that the ombuds institution was going to be part of this Public Ministry, along with other representatives in the municipalities that shared some of its functions.

Figure N. 1. Control agencies in Colombia since the 1991 Political Constitution



Source: Picture adapted from the chart presented by Quintero (2011, p. 108)

Finding a way to introduce the ombuds institution in South America was a challenging venture that the Colombian State faced three months before subscribing an international standard in this regard. It was also the opportunity to reduce the powers of the president, labelled by one of the iconic Colombian politicians of the 20th century as a ‘fundamental institution of the Latin American public law’ that enabled someone to have the entire national power and appoint multiple authorities (Vázquez, 1979, p. 25). And its creation took place in a constituent assembly that also tried to open alternatives to the Liberal and Conservative parties, which until then had almost completely occupied the presidency and the representative bodies.

The opening to new parties would eventually occur, but then, old habits still weighed heavy, as evidenced by the fact that political affiliation was a determining factor in proposing a mechanism for the election of the ombuds person in those who supported the creation of this figure. In fact, those representatives coming from both the Conservative Party (e.g. the delegates Misael Pastrana, Augusto Ramírez, Carlos Rodado, Hernando Yepes and Mariano Ospina, *see Pastrana et al.*, 1991, p. 19) and the Liberal Party (e.g. the delegate Diego Uribe Vargas, *see Uribe*, 1991, p. 3-5), defended a procedure in which the Presidency and the Congress took all the decisions related to nominating and electing.

On the other hand, those ascribed to alternative movements such as the Democratic Alliance M-19 – the political faction derived from the recently demobilized April 19th Movement guerrilla that “gathered all the forces tired of the two-party system that had led the country to its worst institutional crisis” (Valencia, 2022), proposed other alternatives. They tried to involve other key actors in the election, such as the judges – as did, for instance, José María Velasco (Velasco, 1991, p. 28), or even claimed for a popular election of the ombuds person, under the assumption that, in Colombia,

“Internal administrative controls are scarce, given the lack of seriousness, arrogance and politicking that surround the public administration. The political control of Parliament is very weak in presidential systems such as ours” (Garcés, 1991, p. 6).

This pulse was won by traditional parties. The procedure chosen, according to which the ombudsperson would be elected by one of the chambers of Congress from a shortlist sent by the president, was a method that even simulated one that in 1945 determined the election of the Attorney General (Malagón, 2017, p. 119-120). It is noteworthy that in the prelude to the Constituent Assembly, the theorists of clientelism said that this value system could be combated if the changes made to the constitution allowed the State institutions to be opened to society (Leal and Dávila, 2010, p. 357). But this mechanism did the opposite, i.e. it closed the opportunity to influence the election of the ombudsperson to those who were high in certain public positions.

It was not the first time that the existence of NHRI was strongly attached to a State whose influential actors wanted to retain power and authority (Cardenas, 2014, p. 56). Even if this was done through violence, as Julio César Turbay exemplifies. Turbay was president at the end of the seventies who not only devised a criminal security regime with which the government allowed a severe violation of human rights (Comisión de la Verdad, no date), but also one of the first to try to get the Congress to allow the creation of the institution *Human Rights Defender* (Uribe, 1991, p. 19).

4.2. The change of the human rights institution towards a political fortress

The mechanism for electing the ombudsperson has remained the same over time. This has led to the fact that in 20 of its 33 years of existence, this figure has been incarnated by someone linked to one or more political parties. These types of ombudsmen, who are identified in the following table with the acronym *PP*, had a partisan political activity prior to their election and continued to do so when they left office. In the remaining 13 years, there were three ombudsmen who are not known for their affiliation to a political party but mainly for their activity in high courts and multilateral organizations. These persons are an exception and are presented under the letter *E*.

Table N. 1. Elected Ombudspersons in Colombia

Ombudsperson	Period	Experience prior to the Ombuds institution	What he did after the Ombuds institution
Jaime Córdoba Triviño (E)	1991-1996	Criminal Judge of Bogota; Delegate Criminal Attorney before the Supreme Court of Justice; Delegate Attorney for Human Rights	Advisor to ICRC and OHCHR; Vice Prosecutor in 1997; President of the Constitutional Court in 2006; Co-judge of the same court in 2015
José Fernando Castro Caycedo (PP)	1996-2000	Secretary of Parliamentary and Governmental Affairs of the Liberal Party; Congressman of the Liberal Party	Elected again as Congressman in 2006 for the Cambio Radical Party
Eduardo Cifuentes Muñoz (E)	2000-2003	Magistrate of the Constitutional Court; official of the Superintendency of Banks and the Bank of Colombia	Mediator in CETCOIT; Director of the Human Rights Division of UNESCO; Judge of the Special Jurisdiction for Peace

Vólmar Pérez Ortiz (PP)	2003-2008	Advisor in the House of Representatives; executive in the Colombian ombuds institution; member of the Human Rights Commission when the Conservative Party governed between 1998 and 2002	Member of Conservative Party advisory committees; overseer of the Conservative Party; columnist for <i>El Nuevo Siglo</i> newspaper, from where he has promoted members of the Conservative Party
	2008-2012		
Jorge Armando Otálora Gómez (E)	2012-2016	The Vice Prosecutor of the Prosecutor General's Office; Magistrate of the Superior Council of the Judiciary	After accusations of sexual harassment (of which he was found not guilty), he went on to run his own law firm
Carlos Alfonso Negret Mosquera (PP)	2016-2020	Candidate for mayor for the Liberal Party; Deputy Land Manager at the national agrarian authority; Judge of the Superior Council of the Judiciary; Consul in Chicago; Secretary General of the U Political Party	Candidate to the Congress of the Republic in 2022 for the New Liberalism party; then supported - also unsuccessfully - the presidential candidate of the Team for Colombia Coalition
Carlos Ernesto Camargo Assis (PP)	2020-2024	Presented by the Conservative Party as magistrate of the National Electoral Council; director of the National Federation of Departments; Director	Not applicable ¹

¹ Carlos Camargo continues to be the ombudsman at the time of writing this thesis.

		of the National Registry of Civil Status	
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Source: self-elaboration based on the review of different sources (Congreso Visible, 2008; Redacción Política El Espectador, 2008; Redacción Judicial El Espectador, 2015; Pérez, 2015; Pérez, 2017; Partido Conservador, 2018a; Partido Conservador, 2018b; La Silla Vacía, 2021a; La Silla Vacía, 2021b; Redacción Política El Espectador, 2022; Munevar, 2023; JEP Visible, no date).

4.2.1. Clientelism and lack of independence

It is noteworthy that none of the ombudsmen came from the ombuds institution. Volmar Perez Ortiz is no exception, insofar as he worked as a manager, not as a staff member. Conversely, it is since his administration that the presence of ombudsmen linked to political parties has become more frequent, as they have held this position in 16 of the last 20 years.

Two negative trends began in the Pérez administration that have continued over time. On the one hand, the assignment of management positions to relatives of officials belonging to the government that nominated him (Revista Semana, 2004). As the ombuds institution is also in charge of guaranteeing legal defense for those who cannot afford a lawyer, Pérez was also accused of modifying the list of public defenders to favor the parliamentarians who elected him (Redacción Política El Espectador, 2008b). Pérez's actions profoundly affected the functioning of the ombuds institution, as since his administration it has been increasingly used to support individual political careers, something that over time has become common in other State entities (McFee, 2019, p. 189).

Volmar Pérez arrived when the president was Álvaro Uribe, who for the first time since the issuance of the 1991 Constitution, introduced a modification to continue in government for two terms. In both periods he nominated Pérez, an individual he publicly valued for 'his prudence' (Maya, 2012), a trait criticized by human rights platforms due to his silence in the face of the

serious violations that took place in Uribe's government (García and Espinosa, 2012; Corporación Nuevo Arco Iris, 2012).

Pérez's likely bias can be illustrated by observing the functioning of the Early Warning System (EWS), created in the administration of Eduardo Cifuentes to warn about the possible occurrence of international humanitarian law violations (Defensoría del Pueblo, 2018, p. 42). Pérez remained silent when Uribe's government created a new instance to decide whether or not to issue warning documents, something that the OHCHR criticized for "not considering the possibility of risk factors that may originate in actions of the security forces" (2006).

Nor did he refer to the massive human rights violations that occurred during that period, such as the thousands of extrajudicial executions committed by members of the National Army (Jurisdicción Especial para la Paz, 2024). Or he did so belatedly, almost at the end of Uribe's administration² (El Espectador, 2009), when it was already a known phenomenon to which the OHCHR had already referred 4 years earlier (2006).

4.2.2. Bureaucracy and institutional strengthening

Then came years of apparent institutional strengthening of the ombuds institution during the two governments of Juan Manuel Santos (2010-2018), known internationally for the peace agreement made with the guerrillas of the Revolutionary Armed Forces - People's Army (FARC-EP). The signing of the Final Agreement for the End of the Conflict and the Construction of a Stable and Lasting Peace (hereinafter Final Agreement) strengthened the ombuds institution, for example, through the reestablishment of the foundations for its preventive work (Colombian State and FARC-EP, 2016, Point 3.4.9.b, Point 2.1.2b and Point 5.2.1). Then the EWS not only became autonomous again, but its public financing was also strengthened (*Presidency of the Republic, Decree 895/2017, Art. 17*).

² An exception should be made in the case of the department of Antioquia, where the largest number of extrajudicial executions took place, something that was promptly and courageously warned by the then Regional Ombudswoman (Duzán, 2023). This regional variation does not explain the silence that Pérez maintained in the face of the same event at the national level, nor the absence of response in the departments where it also occurred on a massive scale, such as in Meta and Caquetá (Jurisdicción Especial para la Paz, 2024).

Two years earlier, in the midst of the dialogues that the government was holding with the former FARC-EP guerrillas, the presidency also issued administrative acts that modified the organizational structure, changed the classification of existing jobs and created new positions in the ombuds institution (*Decree 25/2014; Decree 26/2014 and Decree 27/2014*).

This apparent institutional strengthening also came with 'undesired' effects that old workers saw with critical eyes. Then started an excessive increase in the salary of managerial positions such as the Delegate and Regional Ombudspersons, whose current salary is equal or exceeds that of 70% of those who serve as departmental governors³, an administrative position of great importance in the country. A salary increase that was positively related to the creation of new management positions. If we observe the issuance of administrative acts creating new regional ombuds offices that have been issued since 1995 to date⁴, 100% of them have taken place since 2016 (Human Talent Subdirection, 2023b). Something similar happens when observing what happened in the official documents that create or modify the specialized ombuds offices at the national level, to the extent that 61% of these have been issued in the last 8 years⁵.

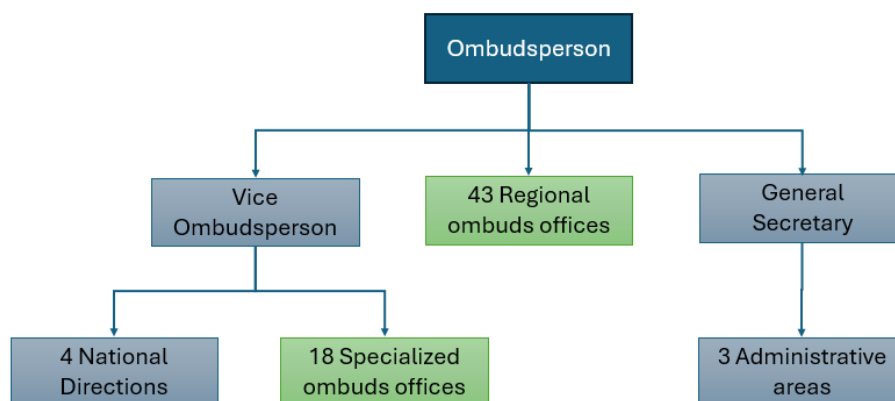
Figure 2. Advisory and coordinating bodies that may be appointed by the Colombian ombudsperson

³ When asking the Ombudsman's Office for the salaries that these two management positions have had throughout their history, they could only count the monthly remunerations since 2015, when the aforementioned decrees began to be complied with (Benavides, 2024). By way of illustration, both the monthly salary of the specialized Ombudsmen for 2024 (\$39,331,165, i.e. €9,397) and that of regional ombudsmen in the same period (\$19,216,134, i.e. €4,591), are equal to or more than what 70% of the governors of the country earn (*Presidency of the Republic, Decree 896/2023, Art. 2; Contaduría General de la Nación, 2024*).

⁴ The calculation is made since 1995, to avoid that the administrative acts that were created in the first three years of the ombuds institution, when it was just taking shape, significantly modify the data presented here.

⁵ This calculation was also made with the information that the Human Talent Subdirection has on the creation of the regional ombuds offices, as indicated by this subdirection in a response in which it annexed seven administrative acts reviewed by the author (2024, p. 1).

Figure N. 2. Advisory and coordinating bodies appointed by the Colombian ombudsperson



Source: Picture adapted from the organization chart presented by the *Defensoría del Pueblo de Colombia* (no date)

At the international level, the importance of public and secure funding of NHRIs has been emphasized (UNGA, 1993, Section B of the Annex), but even if the OHCHR has stressed that adequate financing has implications for regulating the accountability of NHRIs, it is necessary to ensure that the increase of resources does not compromise NHRIs' independent role (2014, p. 192). And that precaution does not seem to have been taken seriously in Colombia.

The exponential opening of regional headquarters with top management positions, got the attention of those belonging to the *Colombian political clans*, that is, to "regional power groups with family ties and/or political, economic and social affinities" which often have their roots in the two hundred years of republican life (Valencia, 2020, p. 1-3). The Colombian ombudspersons, who on some occasions may also belong to one of these groups, began to constantly appoint regional directors who belonged to these clans.

It is deemed appropriate to begin by looking at what happened with Carlos Alfonso Negret Mosquera, the first elected ombudsman after the reforms. He descends of a traditional political family from Cauca, a department located in the southwest of the country. He is a relative of historical figures in national political life such as Tomás Cipriano de Mosquera, the fourth president in the history of Colombia; and more recently his uncle Víctor Mosquera, former congressman; his father Carlos Negret, former mayor of the capital of Cauca; his brother César

Negret, former congressman and also former governor of Cauca on two periods; and his other brother Felipe Negret, president of the Bullfighting Corporation and frequent liquidator of public and private companies (La Silla Vacía, 2024).

Before becoming Ombudsman, Carlos Negret also tried to reach the same mayoralty as his father. But he lost, so he changed his political party and continued in the public agenda. In fact, he was serving as Secretary of the U Political Party, the organization of the then President Santos, when the later included him in the short list of candidates for the position of ombudsperson. He resulted elected despite being the one with the least background in the field of human rights, and after nationally recognized platforms such as the Electoral Observation Mission referred him as a clear delivery of political quotas (Periódico El Colombiano, 2016).

The Negret administration increased the recognition of the ombuds institution. While early warnings were reissued autonomously, he replicated previous practices, such as the selection of quotas of the congressmen as management staff (Duque, 2020). He also took advantage of the 2014 reforms to, for example, modify the manual of functions and be able to hire an expert in tourism with no related experience as Regional Ombudswoman, despite the objections presented by different human rights platforms that also denounced her links to two congressmen of the Liberal Party (Redacción Nacional El Espectador, 2020).

Partial positions vis-à-vis the national government also took on new forms, since politicization should not only be understood as the mere reproduction of partisan political loyalties (e.g. hiring someone from the same party or a director who promotes the party within the entity) but also the ways in which public servants carry out their functions (Peters and Pierre, 2004, p. 2).

In my office, which dealt with the violation of peasant rights, there were contractors who worked simultaneously for the government and the ombuds institution. There was one, for example, who at the end of 2020 was hired by the ombuds institution to provide support "in monitoring the implementation of the Final Agreement in terms of access to land ownership" (Defensoría del Pueblo, 2020), while he was simultaneously linked to the national agrarian authority to support the development of agrarian processes that were to be boosted with the implementation of the Final Agreement (Agencia Nacional de Tierras, 2020). Cynicism also increased. When some of us workers raised voices of protest against a possible flawed performance, then our former Specialized Ombudsman highlighted this dual quality as a guarantee of his knowledge on the subject (fieldnotes, 19 November 2020).

This argument, which was evidently very weak, also failed to explain other contradictory actions taken by the national level of the ombuds institution. The following fact serves as an illustration. While Carlos Negret, in his dual role as Ombudsman and president of GANHRI, praised the Colombian government's good disposition towards the UN human rights rapporteur, the latter claimed that the same government had not allowed him to enter the country to finish a report whose contents they even wanted to erase (SINDHEP, 2020b).

4.3. The current administration and the ombuds institution's loss of legitimacy

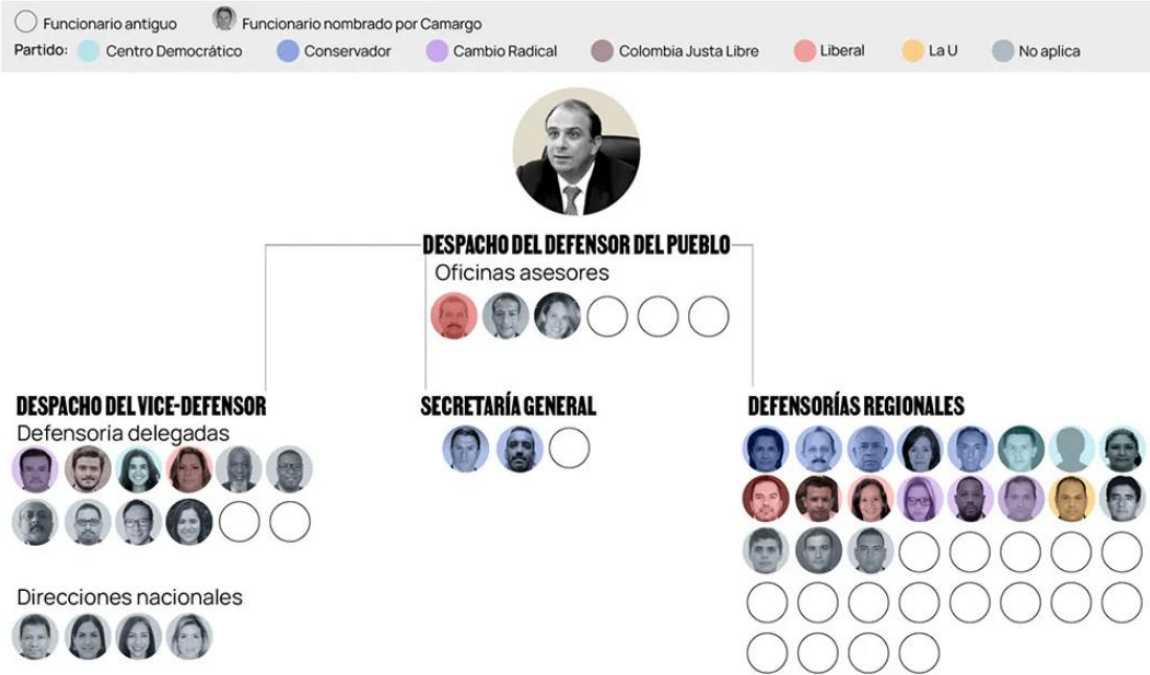
With the arrival of Carlos Camargo Assis to the ombuds institution in September 2020, everything became simply more explicit. Camargo came from serving mainly in management positions in public entities related to elections, and a first work experience of five years in the office of Jorge Pretelt Chajub, the only former magistrate of the Constitutional Court convicted of corruption after soliciting money from the proxy of an oil company to push a court ruling in its favor (Ámbito Jurídico, 2023).

As the convicted magistrate, Camargo comes from Córdoba, a department in northern Colombia where some of the most important figures of the conservative party come from. Camargo is the son-in-law of Nora García Burgos, three times congresswoman for said party; brother-in-law of Marcos Daniel Pineda, the former conservative mayor of Córdoba's capital; and cousin of David Barguil Assis, who besides having been president of the same political party, served twice in Congress as a representative of it and once as a candidate for the presidency of the republic.

Camargo was presented by the Conservative Party to serve in the 2010s as a magistrate in the National Electoral Council, a body created in the 1991 Constitution to control and inspect electoral activity (Art. 265). When the same party arrived to government in a coalition with the Democratic Center Party, Carlos Camargo was nominated in a shortlist that -as unfortunately has become usual- was again criticized for not having individuals with knowledge or experience in human rights (La Silla Vacía, 2020).

His apparent success in Congress has also been framed in his capacity to make political compromises with the political parties that elected him. Approximately 70% of the directors at the national level had "ties to one of the parties that supported him in his campaign for the Ombudsman's Office" (Pérez and Ávila, 2022).

Figure N. 3. Political parties and directors at the beginning of the current administration



Source: Image taken from Silla Vacía (2022)

It has been documented how Colombian political regional clans make use of alliances to become major players in departmental and municipal politics (Valencia, 2020), even more so when the eradication of a bipartisan political life led the regional politicians to become the mainstay of party activity, supported by the clientele relations that allowed them to articulate with the central State (Leal and Dávila, 2010, p. 26).

As it is exposed in the following chart, this sometimes led to the presence of politically and economically powerful actors in the management positions of the ombuds regional offices, even when some of them have been accused of corruption or defending human rights violators. This could be seen in some of the 128 people who have held the position of regional ombudspersons

in the 43 existing regional offices⁶ since the Camargo administration began in September 2020 through January 2024.

Table N. 2. Sample of Regional Ombudspersons during the current administration

Regional ombudsperson	Regional ombuds institution office	Political, economic and social affinities
José Augusto Rendón	Urabá	Lawyer for people convicted of land dispossession in Urabá and other actors who supported paramilitary structures in the same region. Before becoming regional ombudsman, he had spoken out against victims who are now involved in restitution processes.
Carlos Julio Manzano	Atlántico	Former candidate to the House of Representatives. Also managed a law firm of lawyers convicted of corruption with the Liability Fund of the Empresa Puertos de Colombia, present in Atlántico.
Jaime Ricardo Marthey	Norte de Santander	Former candidate for the capital of the department of Norte de Santander for the Liberal Party.
Janeth Tatiana Abdallah	San Andrés	Niece of a former liberal governor of San Andres, and former contractor of one of the departmental administrations in the same jurisdiction.

⁶ The number of offices in Colombian ombuds institution is yet another example of its large bureaucracy. It has 43, 11 times the number of departmental administrative divisions in the country.

Source: self-elaboration based on different sources (Ballesteros, 2019; Zona Cero, 2020; Las Dos Orillas, 2021;)

A review of the public resumes of those specialized ombudsperson who held this position on February 17, 2024, shows that the scenario is no more encouraging at the national level. After reviewing the resumes that by law must be available, it is known that of the 18 specialized ombudspersons who served as such on that date⁷, only two have received specialized training in human rights. Ten of them are lawyers and the most common postgraduate studies are those related to public administration.

The scenario is no better in the work experience field. One third of the managers have coincided with Camargo in other public institutions. And eight of the eighteen specialized ombuds office also held positions in some of the agencies directed by Ivan Duque's government, which nominated Camargo in 2020.

The presence of former government officials in other public positions where alleged irregularities are investigated under the halo of independence is another explicit example of the use of the ombuds institution to make executive actors appear as responsible actors. They are presented as profiles that can continue their career by being part of an oversight body while they retain power and authority in a national level office. Many of those who come from the executive easily put on a new vest whose existence and legitimacy is shielded by international standards, to simply perform a new position in their supposed field of expertise; exposing an innovative example of what Cardenas calls strategic emulation (2014, p. 56). This is an action that reinforces their power in the public arena while -in certain cases- minimizing scandals related to corruption or acts contrary to the defense of human rights.

⁷Alberto Andrés Gómez Amín and Pamela del Pilar Mayorga Ramos, who are two of the 18 specialized public defenders, do not appear in the institutional tools available for consulting the CVs of public servants. In both cases, their work experience and academic training were reconstructed through secondary sources; however, in the case of the former, it was not possible to find information on their academic training.

These could be seen in some striking cases, such as Ernesto Lucerna, former Sport Ministry. Once Duque's government ended, Camargo decided to create a Specialized ombuds office for sport and appointed Lucerna (Defensoría del Pueblo, 2021a; Human Talent Subdirection, 2023). Another one is Ricardo Arias Macías, appointed as EWS delegate in the middle of Duque's government. This former candidate for the House of Representatives, is the son of the president of one of the largest Christian political parties in the country, and the former human rights coordinator in Duque's government. Despite being accused of omitting and censoring reports and early warnings from regions highly affected by the armed conflict, such as Córdoba, Ricardo Macías has remained in office since he arrived to the ombuds institution (La Liga Contra el Silencio, 2022).

If one goes beyond the managerial level and looks at what happens in direct contracting at the national level, there are other individuals who stand out. For example, Emilio José Archila Peñalosa, Presidential Advisor in charge of the implementation of the Final Agreement in the previous government. Despite accusations of poor implementation of the Final Agreement and corruption during his mandate (Díaz, 2022) -which, it is worth noting, to date have only worsened, passing to the Attorney General Office (Procuraduría General de la Nación, 2024b)-, he was hired to do analysis on rights and be a trainer in sessions on the protection of collective rights (Defensoría del Pueblo, 2022).

4.3.1. The request for resignation to the current ombudsman

Under the administration of Carlos Camargo, the ombuds institution has carried out several actions that are far from the alleged autonomy attributed to this institution by international standards. For example: pretending to open an office for the National Army on the second floor of the national headquarters, as communicated by high-ranking military commanders in a meeting organized by directors of the national level (Díaz, 2021), or showing itself inclined to unify the methodology and the gathering of information on the murders of social leaders with the national government and the general prosecutor's office (MOVICE, 2021; Redacción Colombia + 20, 2021).

The citizenry, critical and victimized, has of course not been immune to this type of operation in the ombuds institution. Since before Camargo's election, they had been dissatisfied with the

election mechanism that allowed the arrival of unsuitable profiles. Thus, a sector started a campaign to nominate 22 men and women who, due to their work and personal trajectory, could occupy the position of Ombudsperson. They did it under the logo "Duque: Yes, there are candidates for an Ombudsman's Office free of clientelism, autonomous, dignified" (Defendamos la Defensoría, 2020). The aim was to collect signatures and, above all, to put on the agenda of public opinion an issue that had not been addressed in depth: whether the election mechanism foreseen in the Political Constitution of 1991 guaranteed an impartial and autonomous ternate. The proposals were evidently not accepted and the greatest evidence of this was the arrival of Camargo.

Dissatisfaction with the latter would reach one of its highest levels when Camargo showed indifference to the acts of repression that took in the national strike that began on April 28, 2021 (La W Radio, 2021). In a country with a great deal of social and political turmoil, the interest in the resignation of the ombudsman began to be then a priority. It began to trend on digital platforms such as twitter (#RenuncieDefensor, 2021), where people expressed their dissatisfaction with his biased statements or what some called his complicit silence. The streets also saw unprecedented actions, such as demonstrators with highly paradoxical messages like 'And who defends us from the Ombudsman? #ResignCamargo', which alluded to the discontent caused by the recent head of the NHRI (Redacción Política, 2021).

In the streets, the ombuds institution was delegitimized as a mediating actor and guarantor of human rights. The civil servants were booed, not allowed to attend conciliation activities and even victims of violent actions such as attacks with stones to one of the institutional vehicles (Defensoría del Pueblo, 2021b). The theoretical bases underpinning the legitimacy of an ombuds institution were also undermined in this context. NHRIs also have two levels of accountability, one to the State -particularly the legislative branch- and the other to the public. Being accountable to the latter also reinforces its independence (OHCHR, 2010, pp. 36 and 103.), so if citizens cease to recognize him as a responsible actor that respects the balances of power, then the reports and pronouncements made by the ombudsperson risk losing their halo of impartiality.

Despite the seriousness of these facts, it was not possible to find a procedure to achieve his resignation. In the absence of a method, a constitutional reform must be achieved to incorporate it. No reform has succeeded in Congress to change the mechanism for the election of the ombudsperson. Rather than as a representative body, through what Gerber *et al.* have called the

ex ante legislative control of bureaucratic decision making, Colombia's legislative bodies in this sense have acted more as a barrier to stop legislation that differs from their preferences and thus establish a type of control over State bureaucracies (2005, pp. 24-28).

The government has not acted in this direction either. On the contrary, if one looks at the annual budget allocation since 1995 with the present value of the Colombian peso corresponding to the year 2024⁸, the largest allocations have taken place in the years 2021 and 2023, that is, in the current administration of the ombuds institution (Colombian Ombudsman Institution Budget Group, 2024), which is undoubtedly the one that has had the most scandals and flawed actions throughout the history of this institution.

Then there remained what citizens could do. But experience has shown that the popular initiative as a mechanism of citizen participation for achieving a constitutional reform has been very unsuccessful in this sense (Quinche, 2023, p. 97), and this experience has not been the exception.

There were still the multilateral organizations, but their approach to the ombuds institution was not encouraging either. Although the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions (SCA) noted in the submission made in 2017, that the country also needed a process for the removal of the ombudsperson that would ensure the transparency and impartiality of the process, it then granted the highest category to the entity in that year (SCA, 2017, pp. 22-24). And it even confirmed it in 2022 (SCA, 2022, p. 12), when most of the events described in this chapter had already occurred. And that was not all. Then the GANHRI decided to elect Camargo as its president.

⁸ The *present value* is the current value of a past or future sum of money. After receiving the official information, the allocation that the Colombian State has made each year to the ombuds institution was identified, counted in 2024 pesos. This was done to identify changes in the budget allocation without the devaluation of the Colombian peso leading to incorrect inferences.

5. The Colombian case in the light of existing ombuds institutions in the Andean region

The institutional adjustments to introduce the institution of the ombudsperson were discussed since the eighties in Latin America. The International Bar Association (IBA), a law society established in 1947 with the aim of protecting the rule of law globally (IBA, no date), subsidized the first two regional symposiums of the ombudsman, that took place in Argentina in 1985 and two years later in Brazil. By that time, this figure already existed in other continents, such as Oceania (Hill, 1974, p 1077), but Europe remained as the main reference. In the conferences sponsored by the IBA, the Spanish' *Defensor del Pueblo* was portrayed as the model to follow and the ombudspersons from Sweden and Portugal were invited to share their experiences (Gil, 2002, p. 205).

The broader guidelines came from the United Nations. According to Linda Reif's reconstruction, the UN began building a frame since 1946, when the ECOSOC invited States to create local human rights committees to boost the work expected from the Commission on Human Rights (Reif, 2020, p. 155). But it would not be until the eighties that their commitment to NHRIs began to be strongly reinforced. Since then, the General Assembly started taking more decisive actions, such as sponsoring activities related to NHRIs (Cardenas, 2014, p. 44; UNGA, 2019); approving resolutions alluding to the need for independent national institutions that could promote and ensure the protection of human rights (e.g. UNGA, 1993; UNGA, 2001); and commissioning specialized agencies to provide technical assistance in this regard (Cardenas, 2014, p. 44-56; Reif, 2020, p. 155).

5.1. The various ways of adopting and choosing the ombudsperson in the Andean region

These frameworks would be differently appropriated according to each country’s circumstances and legal traditions (Cardenas, 2014, p.56). I would like to focus on the experience of those countries belonging to the Andean Community organization, which is currently composed of Colombia, Ecuador, Perú and Bolivia (Comunidad Andina, no date). Besides the commercial relations, these States share a legal tradition influenced by the European models of the 20th century, the conceptions of the liberator Simon Bolivar (more specifically the *presidentialist* system, according to which there is one head of government with broad political powers, *see* Vázquez, 1979: 25), and in some cases *sui generis* constitutional charters that vindicate the native peoples as the foundation of power, as it happens in Ecuador and Bolivia.

Seeking to deepen the above mentioned, the following is a description of the regulations relating to the candidacy and election procedure of the ombudsperson in each of these countries. Consideration is given to the mechanisms initially foreseen, the reforms made over time and the current procedure.

Table N. 3. Mechanisms for the election of ombudspersons in the Andean region

Country	Initial procedure election and its first modifications	Current election procedure
Colombia (ombuds institution introduced in the 1991 political constitution)	<p>Article 281 of the Political Constitution of 1991.</p> <p>“He/she shall be chosen by the House of Representatives for the four-year period from a short list elaborated by the President”.</p> <p>Law No. 24 of 1992. Established the organization and functioning of the ombuds institution. Although this law was approved after the signing of the Paris Principles, it did not allow for a more open process, nor did it prohibit the</p>	<p>The same, despite two recent reforms:</p> <p>Decrees No. 25, 26, 27 of 2014</p> <p>“Reinforced” institution’s staff without questioning the election mechanism.</p> <p>Legislative act No 2 of 2015. <i>Balance of power and institutional readjustment reform</i></p> <p>Re affirms the selection mechanism in place since de 1991 Constitution.</p>

	nomination of candidates belonging to political parties.	
Peru (OI introduced in the 1993 political constitution)	<p>Article 161 of the Political Constitution of 1993.</p> <p>“The Ombudsperson is chosen and removed by the Congress by the two-thirds vote”.</p> <p>Law 26520 Ombudsman’s Office Organization Act of 1995.</p> <p>The Congress appoints a Special Commission respecting the proportion of each parliamentary group. Proposals of candidates shall be presented to allow observations from civil society. With the list of definitive candidates, the Congress proceeds to make the election.</p>	<p>Law No 29882 from 7 June 2021. <i>Amendment to the Organic Law of the Ombudsman’s Office.</i></p> <p>Article 3. After the Congress appoints a Special Commission, two types of election might proceed:</p> <ol style="list-style-type: none"> 1. Ordinary. The Commission selects from one to five candidates declared suitable to be chosen. and the Congress proceeds to make the election. 2. Special. The commission selects from one to five candidates and makes its call by invitation. Then the Congress is responsible for the election.
Ecuador (OI introduced in the 1996 reform of the 1979 political constitution)	<p>1996 reform of the 1979 Constitution</p> <p>The Ombudsperson shall be selected by the Congress, with the vote of the two-thirds vote.</p> <p>Organic Law of the Ombudsman’s Office of 1997</p> <p>The Ombudsperson should not belong to any militant or party affiliation, or had participated in electoral movements, in the three years preceding his or her election (Art.4).</p>	<p>Constitution of 2008</p> <p>Creates the Council of Citizen Participation and Social Control, formed by councillors proposed by social organizations and citizenship. It is recognized as the board that elects the ombudsperson (Article 208). This constitution also established the “demonstrated wide-ranging experience in the defence of human rights” as a requirement to become ombudsperson (Article 215). The National Assembly is in charge of the possession and prosecution of the ombudsperson, if applicable (Art.120 and Art-131).</p>

	<p>Further on: Article 96 of the Political Constitution of 1998</p> <p>The Ombudsman is elected by the Congress after having listened to the human rights organisations legally recognised.</p>	
<p>Bolivia</p> <p>(OI introduced in the 1994 political constitution)</p>	<p>Chapter II of the 1994 Constitution</p> <p>The Ombudsman is chosen by two-thirds of the Congress.</p> <p>Ombudsman Act of 1997</p> <p>The Joint Commission on the Constitution, Justice and Judicial Police receives and qualifies fundamental proposals for candidates in a public competition where background and merits are considered. Equal opportunity is guaranteed for men and women. Civil society organisations may either nominate or object names to the Commission, which presents the slate to the Congress to proceed with the election.</p>	<p>Political Constitution of the Plurinational State of Bolivia 2009</p> <p>Article 220. Reiterates a mechanism that works under invitation and public competition. This takes place “among persons recognised for his or her trajectory in defense of the human rights”.</p> <p>Law 870 of 2016 Ombudsman Act. Article 9</p> <p>I. The Legislative Assembly starts the selection process approving the call for applications and stage of citizen objections. Then, the Joint Commission qualifies and rises the nomination and the corresponding report to the Assembly, that chooses in a vote where he or she wins by two-third parts.</p>

Source: self-elaboration based on the review of the above-mentioned constitutions, laws and decrees.

5.2. Formal differences with Colombia's stagnant mechanism

In Colombia, Peru, Bolivia and Ecuador, the entity that would present itself as a National Human Rights Institution would adopt the same name as the one created in Spain: the *Defensoría del Pueblo*. Despite this nominal similarity, there are considerable differences in its design.

Colombia was the only country to create the figure before the issuance of the international standards (i.e. the Paris Principles subscribed in October 1991), and the only one that maintained during the 1990s an election mechanism that allowed a profound influence of the president, who remains with the power to choose the slate. The other States relied on Congress to listen to human rights organizations, as in the case of Ecuador, or to set up special commissions to hear, qualify and define the candidates to be ombudsperson, as it happened in Peru and Bolivia.

As time went by, these differences became even more marked. New regulations have appeared that strengthened the bureaucratic and financial apparatus of the ombuds institution in Colombia, without making changes to the requirements to be met by the candidates or the mechanism for electing them. In Peru, the number of members of the special commission was increased, a new election modality was established, and citizens could raise objections to candidates. In Bolivia, the public call was deepened, and the need to establish evaluation criteria, merits, suitability, trajectory, and personal and ethical integrity was introduced, as well as stages for citizen to appeal nominations.

And Ecuador went even further. The 2008 Constitution adopted a new election mechanism through which the Council for Citizen Participation and Social Control, which is composed of councilors proposed by social organizations and citizens, appoint several of the most important public positions in the nation, such as the general prosecutor, the financial controller and the ombudsperson (Ecuador's Political Constitution of 2008, Chap. 4, Art. 207).

5.3. Existence of other biased ombudspersons in the region

Despite formal differences, at certain times in the history of each ombudsman institution, certain administrations have been accused of not being independent of the government. Peru might be one extreme case. In October 2022, the union of workers of its ombuds institution

requested precautionary measures in the face of an election process that “failed to comply with legal and constitutional provisions to guarantee a meritocratic, transparent process with citizen participation” (Sindicato de Trabajadores de la Defensoría del Pueblo del Perú, 2022). Even if the judiciary recognized them an initial positive reply, the Constitutional Tribunal -which at that time had 86% of its members elected by the senators of that legislative period- backed the Congress. This representative body then proceeded to propose their own candidates in a direct way, without making a public invitation as it was considered in the law. This is how Josué Manuel Gutiérrez was elected. He is the current ombudsman. Prior to being appointed as such, Gutiérrez served as the parliamentary advisor of the political party in power (Berrios and Cárdenas, 2023).

In Bolivia no pronouncements from the workers or the existence of a union could be found. There is an accusation of an ombudswoman acting on behalf of the government that should be viewed with caution. It concerns the administration of Nadia Cruz, who was previously an official of the same institution for 10 years and legal advisor to an association of victims of disappearances. She was highly criticized by an interim government lead by Jeanine Añez, who was later condemned by the Bolivian Supreme Court for having exercised power contrary to the constitution and the law (2023). Jeanine Añez singled out Nadia Cruz for apparently showing a performance that favored the image of former president Evo Morales, elected by the political party Movement to Socialism. This happened in the context of a series of accusations that the interim government led by Añez used to disregard the ombudswoman's appeals; actions framed in charges that appeared to be politically motivated (Human Rights Watch, 2020).

And finally, there is the case of Ecuador, where Ramiro Rivadeneira, the second ombudsman elected after the creation of a constitution that was broadly supportive and innovative in terms of rights, was paradoxically accused by the workers of the institution of acting in favor of the temporary closure of the union, maintaining a complicit silence in the face of abuses that took place during the government of Rafael Correa, and setting up offices to carry out an administration aligned with the president. Despite its seriousness, this case is not common and was at least controlled. The Council for Citizen Participation removed him from office in 2018 and has chosen other ombudsman who did speak out against abuses committed by Correa while they were in his administration (Vaca, 2022).

This brief review of the regional experience demonstrates that the procedures for the election of the ombudsperson do matter. Even in countries with such profound political instability as Peru⁹, where, before the current impartial ombudsman took office, an unusual occurrence in the history of ombuds institutions in the region took place. The existence of legislation guaranteeing a democratic election of the ombudsperson, allowed a temporary ombudswoman who advocated for a change in the election procedure that ensure the independence of this institution (Berrios and Cárdenas, 2023; Comisión Interamericana de Derechos Humanos, 2023, p. 105). Despite being promoted by international organizations in highly politicized scenarios (OHCHR and UNDP, 2010, p. 235), this is an unprecedented initiative in the region.

It is difficult to think that something similar could happen in Colombia. Even more, it is hard to imagine that an ombudsperson would have to leave office because of a removal process, or one of the serious accusations that have been proved by civil society or workers.

Other differences are equally striking. First, no data have been found related to an expansion of management positions that are distributed to political actors in other ombuds institutions. Furthermore, in other countries, there have been unfortunate elections at certain points in time when the governing political party has also majorities in Congress. But experience shows that this does not always happen. In contrast, experience has shown that it is highly likely that the existing mechanism in Colombia could be used for doing politics even in moments when the government does not have majorities in Congress.

This is best understood by corroborating that the relationship between the executive, the Congress and the ombudsperson has been different in these countries. Although in Ecuador and Bolivia the creation of the ombuds institution took place to deal with moments of high social conflict, its evolution has been very different. In the former, its independent positions even led to the withdrawal of funds and the shortening of its term by Congress. Something similar tried to happen in 2003 in Bolivia, where the NHRI has remained as a sign of stability in a highly volatile political scenario, in which the human rights discourse has been used to legitimize both the actions of the government and those of civil society, without either being able to assume a monopoly of it (Cárdenas, 2014, p. 167-171). In Colombia, the creation of the ombuds institution was added to the group of other human rights offices that were trying to do something

⁹ Perú has seen 11 presidents in the last 24 years and a Congress that has reached 91% unpopularity figures in recent years (La República, 2023).

similar in other State offices (e.g. in ministries, in the army, and in the general prosecutor's office, whose chairman also comes from a slate made by the President). In that sense, it inherited a long-standing legacy, and it came to replace another "official bureaucratic human rights narrative" according to which State agencies used human rights offices to, for example, disassociate links between illegal actors and the State (Cardenas, 2014, p. 158).

The most basic distinctions can then be more broadly understood. For example, in Ecuador and Bolivia, it is mandatory for candidates to prove a long track record in the defense of human rights. Moreover, recent affiliation to a political party is also prohibited in Ecuador. In fact, with the existing regulation in that country, the last two ombudsmen of Colombia could not even be proposed: the first for having arrived at the position after having been the secretary general of the then president's party, and the second for lack of experience in human rights. Such a regulation would probably have saved Colombian citizens from very unfortunate experiences.

6. International agencies vis-à-vis ombuds institutions whose independence is at risk

Some of the most important moments in the existence of ombuds institutions took place in 1993. In that year, Tunis held the second international workshop of NHRIs, in which attendees decided to create a new global authority: the Coordinating Committee of Institutions for the Promotion and Protection of Human Rights – that in 2016 started to be known as the GANHRI (GANHRI, no date). On those same days, the UNGA adopted a resolution on the existence of NHRIs, which encouraged States to their establishment and contained an annex with the Paris Principles (UNGA, 1993b, Num. 3). The latter were presented as an international standard two years earlier although they were drafted without taking into account the experiences of NHRIs in African and South American countries (Reid, 2020, p. 156-157)¹⁰.

The OHCHR, "the United Nations' principal human rights entity," also appeared that year and since then began to play a key role in assisting governments to enact policies and laws (OHCHR, no date). Since its beginnings, the OHCHR was commissioned to address the creation and strengthening of NHRIs (Cardenas, 2014, p. 44). Something that it would also do by articulating a collaborative work with the GANHRI, whose work has been validated and legitimated in the formal documents of the OHCHR (e.g. OHCHR, 2005, Num. 11, 18 and 19). In the same vein, the GANHRI conducts periodic assessments developed under the auspices of, and in cooperation with the OHCHR (GANHRI, 2023, Art. 11.1).

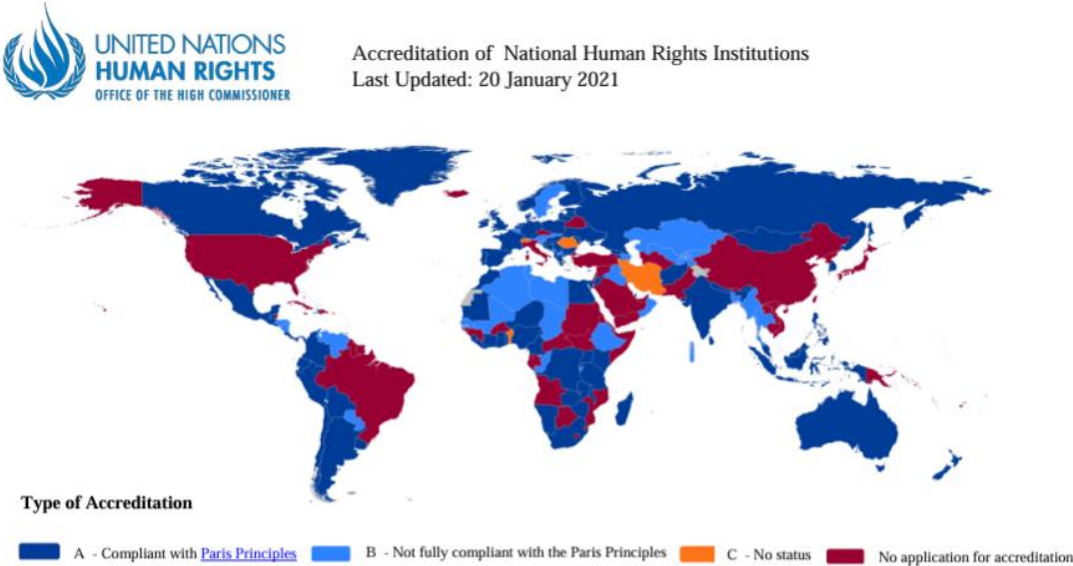
For doing the later, the GANHRI has an Accreditation Sub Committee that reviews the existing NHRIs every 5 years, through a procedure in which members from different continents - elected for a three-year period - define the status each institution deserves considering how much they agree with the Paris Principles and how they could improve (UNGA, 2018, Num. 4; GANHRI, 2023, Art. 15). Their decision is more important than it seems. In addition to being entitled to participate in the decision-making of GANHRI and having enhanced participation rights in the UN human rights mechanisms such as the Human Rights Council (GANHRI, 2018, p. 11), there

¹⁰ By that time, already existed precedents of ombudspersons in the region such as the one created in Guatemala through the Political Constitution of 1985, and the National Human Rights Commission (NHRC) created in Mexico by presidential decree in 1990 (Gil, 2002, p. 440).

is the local legitimacy that comes with a good accreditation. Likewise, the initiatives held by each United Nations Country Team should reflect the development and accreditation status of every NHRI. Moreover, if there exist programs to strengthen NHRIs, they should be oriented to their defined needs considering their development and accreditation status (UNDP and OHCHR, 2010, p. 117).

Currently, these Sub Committee recognizes the A Category, when institutions are fully compliant with the Paris Principles, and a B when they are partially compliant with the same standards, i.e. “that there are multiple issues of concern relating to structure, effectiveness, independence or a combination of those factors” (GANHRI, 2018, p. 11 and 36). Previously there was also a C Category, used when the institution was not in compliance with the Paris Principles. However, the GANHRI decided to abolish this classification by 2015 and it was only maintained in those institutions that received this status before October 2007, as it is illustrated in the following world map, which illustrates the accreditation of NHRI at the beginning of this decade (SCA, 2021).

Figure N. 4. Accreditations of national human rights institutions by GANHRI for 2021



Source: Image taken from GANHRI (2021b)

6.1. Periodic assessments of the Andean ombuds institutions

It has not been very clear how the categories established by the GANHRI reflect the qualitative differences among existing ombuds institutions. Despite the marked differences and the impact of the existing legal regulation of suitability and election mechanisms, the ombuds institutions in the four countries of the Andean Community had been recognized with the A Category in the latest assessments made by the GANHRI (GANHRI, 2023b, pp. 7-8). In other words, the international body considers that currently all cases described in the last chapter would be sufficiently compliant with the Paris Principles to be recognized with the highest category.

Considering that Colombia presents itself as the most anomalous case for quite some time, I would like to delve into one of GANHRI's latest report on this ombuds institution, which has been recognized with the highest status since the first assessment was made in 2001. In the 2017 valuation, the SCA noted the following regarding the selection and appointment process of the Colombian ombudsperson:

"the process currently contained in the legislation is not sufficiently comprehensive or transparent. In particular, it fails to: require the advertisement of vacancies; establish clear and uniform criteria by which all parties assess the merit of eligible candidates; and specify the process for achieving broad consultation and/or participation in the application, evaluation, selection and appointment process". Aspects that this Subcommittee considered fundamental to achieving "a process that promotes merit-based selection and [that] guarantees pluralism to ensure the independence of the NHRI's senior management" (SCA, 2017, pp. 22-24).

The paradox lies in the fact that the GANHRI's SCA, decided to grant it the best qualification despite the inexistence of a legislation that would make it possible to comply with some of the essential guidelines contained in the Paris Principles.

This was similar to what has recently happened in Mexico, where the ombudsperson is also chosen by majorities in the Congress, which is likewise responsible for making the nominations. Under this framework, the Mexican Commission for the Defense and Promotion of Human Rights, an organization with consultative status in the Organization of American States and the United Nations (CMDPDH, no date), submitted a letter to the SCA in order to express their concern about the non-compliance with the Paris Principles regarding the selection and appointment of the head of the NHRC.

They explicitly made the following claim:

"In view of the imminent risk and, considering the information presented below, we request the Sub-Committee to initiate a special review of the 'A' status that currently accredits the NHRC" (CMDPDH, 2019, p. 1).

After rigorously exposing how an election process had taken place without guaranteeing the impartiality required by the case, the signatories denounced the election of a director who was a militant of the governing party. Furthermore, they recalled how the selected ombudswoman even pointed out that "she would not resign from the party but would only request a leave of absence from it" (CMDPDH, 2019, p. 7). As it happened with our labor union, this letter was not answered despite the fact that it was presented jointly with 18 of the main human rights organizations in the country and 15 internationally known human rights defenders.

Another communication followed in 2022. Besides referring to the silence of the elected ombudswoman in the face of facts such as the militarization of the national guard, they reported to the GANHRI how their warnings had come true and asked once again to initiate an extraordinary review and a revocation of the A Category (CMDPDH, 2022, p. 2). They did not obtain results on that occasion either (CMDPDH Direction, 2023).

But an important distinction must be made with the Colombian ombuds institution. Despite public demonstrations against the current ombudsman and workers' complaints directed at GANHRI in 2021, he was appointed that same year to occupy the presidency of that global alliance (GANHRI, 2021). This exposes a quite clear contradiction. While in manuals a highly politicized human rights institution may even have United Nations support withdrawn (UNDP and OHCHR, 2010, p. 261), in practice, the Colombian ombudsman, who has extensive evidence of lack of independence, was distinguished with the chairmanship of an international organization supported by the OHCHR.

Under current international criteria, it is uncertain how common this scenario of highly politicized and not very independent human rights institutions is. Not only in Latin America, since it is worth remembering that in Austria – which ironically hosted the event at which the foundations of the OHCHR were laid (UNGA, 1993b), there is an election mechanism that allows the reproduction of patronage within the ombuds institution done by the three political parties with majorities in the Congress (Dahlvik et al, 2020, p. 203-204). In the latter case, even

if this is a duly documented dynamic, its legal frameworks remain the same with respect to the election process (Volksanwaltschaft, no date) despite calls from citizens for the existence of ombudspersons without ties to political parties (United States Department of State, 2022, p. 10).

In this scenario, it would be useful to consider how multilateral agencies can address this problem. The remainder of this chapter presents a contribution in this sense.

6.2. Towards a reconfiguration of the actions carried out by international organizations

It would be wrong to state categorically that multilateral agencies have maintained absolute silence in the face of the degradation of all Latin American ombuds institutions. They have made preventive calls in the face of apparently tense elections, as it happened five years ago in Mexico when, faced with a governing party that had majorities in Congress, the OHCHR stressed the importance of a transparent process to avoid legitimacy problems and ensure compliance with the Paris Principles (OHCHR, 2019). After encountering a similar scenario in Bolivia, the same office pronounced itself in 2022 to support the election of a person who would work independently (Cuiza, 2022).

Despite the recurrence in the Colombian case, there is only one call for an impartial election (Howland, 2012), and none regarding the overall performance of an ombudsperson, as the international organization Human Rights Watch has recently done (Vivanco, 2020). But the interventions made by international NGOs cannot replace the missionary work of the specialized UN offices. If the latter were to play a more proactive role, they would have to ask themselves when to intervene and which cases should receive more attention due to progressive deterioration over time.

Based on what has been exposed in chapters 4 and 5, it is argued that the UN offices should guarantee a two-way intervention - from within and from outside - in ombuds institutions where the lack of independence of the directives of a NHRI is more of a pattern than a mere isolated fact.

6.2.1. An intervention within the ombuds institution

It is possible to partially agree with the thesis defended by Cardenas, according to which "[t]hose wishing to improve these institutions must target the institutions themselves, beyond the government, calling on NHRIs to be socially accountable" (2014: 348). According to this author, the tendency to pressure governments to comply with the international standards inscribed in the Paris Principles denotes an important, but in any case incomplete, purpose. It is therefore necessary, says this author, to improve the accountability of an NHRI, i.e. to "provide discursive, public spaces for state and society to communicate and confront contested norms of wrongdoing" (2014, p. 348).

This has been important in getting some directors to accompany vulnerable populations in a more serious way. But this is not enough. This point of view shares characteristics with another approach that is already present in the United Nations and that, in cases such as the Colombian one, has not yielded the expected results, as it assumes that structural changes can be generated within regardless of the quality of the institution's leadership. For example, it has been suggested that, when there are mechanisms that do not allow the arrival of a suitable ombudsperson in a country, the same person elected by a procedure that is considered defective should present a legislative proposal to promote a change in it (OHCHR and UNDP, 2010, p. 235), or even advocate for an independent and objective impeachment process for itself, as the SCA suggested to the Colombian ombudsman in its second last evaluation (2017, p. 24).

It is unlikely that this will happen with directors close to political parties who, based on the current election mechanism, have been in the entity's leadership positions for almost twenty years. Moreover, the ombudspersons, who hold this position amid constant questioning about their (im)partiality, will not drive a change that would feed the existing controversies surrounding their management and appointment. In this sense, it is also considered convenient to recognize a greater importance to an intervention from the outside.

6.2.2. Towards a new valuation of existing ombuds institutions

Outside action can begin by reconsidering the content of the guidelines presented by the multilateral agencies. Their toolkits need to move beyond the emphasis on their embryonic stages – e.g. 'pre-established phase', 'establishing NHRIs' and a 'Consolidation phase' (as it is for instance portrayed in the Chapter 1 of OHCHR and UNDP, 2010), which do not pay due attention to the shortcomings of those ombuds institutions that became operational decades ago. In the same sense, UNDP could in turn transcend objectives with existing institutions, not limiting itself to "accelerate the growth rate of strong and independent NHRI by more than fourfold if universal coverage is to be achieved by 2030" (UNDP, UNODC and UNHCHR, 2023, p. 10 and 19).

Even if it is deemed appropriate to continue promoting the creation of these institutions, the United Nations could also have a more proactive role when it comes to the choice of election mechanisms. It must start from the assumption that there is a complex relationship between human rights and power, and even though the institutionalization of human rights has made it possible in different cases to challenge and constrain the power, the interest in creating institutions does not respond exclusively to this pretention (Stamers, 2009, p. 104). It has been shown how contrary interests can at least be foreseen by means of a suitable election mechanism, something that will not necessarily clash with the prerogative of each State to choose the legal framework for the establishment of a national institution (OHCHR, 2005, p. 1), It should therefore warn and prevent of the risks attached to certain mechanisms, as those currently existing in Colombia or Austria.

For cases such as these two countries, new guidelines could be considered to improve a reform. The existing toolkits could therefore include an 'institutional reconfiguration' section to explore how to seek an institutional adjustment through legislative and administrative channels. But this kind of efforts must be articulated with other actions taking place at the global level, such as the periodic evaluation of ombuds institutions.

Currently, according to GANHRI guidelines, the *Demonstrating independence in practice* is one of the variables to assess a NHRI (GANHRI, 2018, p. 23). In these cases, they consider it advisable to publish periodic reports, but do not specify how to assess this variable. This is an information gap that has led many institutions to be rated with the highest category, without reflecting the degree of (im)partiality and deterioration that may have occurred in many of them. Therefore, they should include variables to determine the bias of NHRIs, such as the presence of officials coming from the government. Some of these features are evident and have even

been highlighted in work funded by the OHCHR on how to assess the effectiveness of an NHRI: "good appointment procedures are likely to produce independent, professional and courageous members. Members and staff should not be closely tied to the civil service". (International Council on Human Rights Policy, 2005, p.8)

Moreover, it is important that there is an assessment, but the way in which it is defined could also be modified to consider organized citizenship. This would make it possible to make progress on two very important points. First, to satisfy a requirement that public institutions, including NHRIs, are accountable to international standards that have been publicly promulgated (OHCHR, no date). This must be achieved vis-à-vis both the citizens and the international community, and while the ombuds institution can account for its work by issuing reports and briefings (OHCHR, 2010, pp. 36 and 70), this is not the exclusive way to assess the fulfillment of its responsibilities.

On the other hand, an assessment that listens to organized citizenship that can contribute information gaps related to the relations between existing human rights institutions and power. National NGOs, local human rights associations, labor unions and other civil society organizations testimonials can help to understand the ways in which NHRIs have been designed and implemented (Stamers, 2009, p.102). These sectors are the ones that have direct interaction with the high-ranking bureaucrat when he/she intends to deploy his/her functions, their gaze is not limited to the fixed variables that GANHRI constantly evaluates (e.g., the robustness of public funding or the opening of new offices), but to the sensations left by the existence of an NHRI (Jaramillo et al, 2019, p. 14), i.e., whether it properly works or whether officials effectively respond to citizen requests.

A different categorization, which better reflects what is going wrong, could be an indication of the shortcomings that urgently need to be changed, something that would make it possible to promote institutional arrangements at the internal level. It could also prevent the international legitimization and positioning of ombudspersons that have been negatively evaluated by human rights organizations, as it happens nowadays in the GANHRI. Adjusting the evaluation criteria would allow the final evaluations to reflect long-standing problems, instead of creating a parallel reality where it is understood that international standards are widely complied with.

7. Conclusion

This research chose a particular path to explore how the OHCHR can act more proactively vis-à-vis those ombuds institutions where there is a widespread presence of local politicians. First, it was deemed appropriate to present a diagnosis. Starting with the Colombian case, I began by exposing how a flawed mechanism in the election of the ombudsperson can give rise to clientelism, a widespread practice among politicians who pay favors to each other through public resources, reflecting a value system that generally undermines the principles of autonomy and independence on which an NHRI is based.

And not only that. A broader analysis of this dynamic shows how the national level of an NHRI can replicate the interests of the executive. Not as a ministry. It is the deployment of a strategy that, with human rights as a banner, can legitimize the actions of a government in office, and that is why the theory of the self-restraining State proposed by Cardenas was appropriate to understand the problem (2014, p.6). A NHRI acts in a flawed manner not only when it explicitly speaks in favor of a government, but also when it allows executive officials to join the institution and act subsequently - or even simultaneously, as discussed in chapter 4 - under the protection of the independence that it enjoys under formal instruments.

These kinds of actions may not only be aimed at favoring the national government, but also the individual trajectories of certain actors and family groups that play a role in the election of the ombudsperson. When the appointment is mediated by the executive and a legal representative body with strong regional roots, as is the case with the House of Representatives, this may favor individuals on different geographical scales. Even more so when the elected ombudsperson also has control over a large number of territorial seats, and there is a combination of factors that allow the entry of political actors from the regional level.

Considering what is happening in the other countries that make up the Andean Community, it was possible to identify that this type of dynamics is not exceptional in Colombia, even though it seems to be the ombuds institution where this scenario is most serious and prolonged in the region. It was also observed that more inclusive election procedures and the legal recognition of certain basic requirements that do not exist in Colombia (e.g. mandatory human rights

background or non-membership of a political party), decrease the likelihood of a growing politicization of the ombuds institution in other countries.

This does not mean that the other cases deserve less attention, as they have also demanded it in the face of explicit contradictions in the GANHRI's procedures. For this reason, it was deemed appropriate to analyze the procedure of this international legal entity that, with the company and support of the OHCHR, periodically evaluates compliance with international standards. The GANHRI has not only recognized the highest category to some NHRIs that operate in a totally anomalous way, but has also appointed as presidents those ombudsmen who besides not having a background in human rights, have been the subject of scandals in their own countries.

In this sense, the above also served to demonstrate that these unsuitable election mechanisms not only undermine the composition of human rights institutions at the national level, but also that of those global alliances that should safeguard the work of a figure that has been maturing for more than two hundred years.

Another important decision was to consult secondary sources to expose the ways in which the OHCHR acts. It became then evident how this office has played an active role in specific moments (i.e. days prior to the election of biased ombudspersons or when there is an unfortunate use of an EWS), without paying sufficient attention to structural problems, such as defective election procedures.

A void that remains despite it has been proven that the NHR'Is performance can be affected by flawed mechanisms and that these can be changed. In the Colombian case, it has been shown how the autonomy of the EWS was recovered thanks not so much to the government or the Congress, but to the requests made by a rebel group in the framework of a peace negotiation that counted with international accompaniment. A successful experience that illustrates the importance of the roles that external actors can assume.

The OHCHR's calls for attention when governing political parties might be influencing the election of an ombudsperson have been present in a good part of the region studied. This, which is apparently a point in their favor, could be better if they took measures to avoid making this pronouncement at the last minute repeatedly. It was therefore considered appropriate to state that an adjustment in the guidelines and actions of the specialized offices that have historically promoted the existence of NHRIs could allow for more strategic action. Emergency appeals

will always remain important, but long-term strategies could be deployed to deal with flawed mechanisms.

In order for this to change, the problem must first be recognized, and for this we can turn to the instruments that currently allow for the assessment of ombuds institutions that have been acting contrary to international standards for more than a decade. The SCA has been very cautious in this regard. Perhaps they do not want NHRI to lose its legitimacy due to the loss of status. But the validity of such assumptions would have to be considered on a case-by-case basis. In Colombia, for example, it is debatable whether, given the recent opposition to the ombuds institution by the civilian population, the loss of status will coincide with an already dissatisfied citizenry. This is a scenario that shows the need to recover the independence that justified its creation in the nineties, something that could hardly be achieved if at international level it is recognized a status that does not coincide with what happens within the country.

7.1. Suggestions for further research and recommendations

This paper contributed to a pending agenda around the variables that affect the independence of ombuds institutions in the Andean Region. Despite its relevance, there is an absence of academic work that studies this quality inside other State agencies that the United Nations offices recognize as NHRIs. There is no denying that researchers analyzing their situation from the outside have made important contributions. The books of Reif (2020) and Cardenas (2014) are significant in this regard since, based on secondary sources, they have allowed a global reading of the functioning of NHRIs while delving into some regional and national experiences in a short and succinct manner.

But it is necessary to document paradigmatic cases in greater depth and using more research methods. The ethnographic experience that was part of the methodology deployed in this research has shown the advantages offered by tools from the anthropology of the State, insofar as they make it possible to highlight when the bureaucrat promotes individual political projects (Jaramillo et al., 2019, p. 16; McFee, 2019, p. 189), departing from an institutionalization of human rights.

This set of techniques has not been found to be employed in the work documenting the functioning of an NHRI. Those of us who work or are interested in the human rights sector belong to various disciplines, and this is an advantage that has been little explored in research on ombuds institutions. Continuing with this agenda would help to strengthen the demands for change that GANHRI and OHCHR have received from human rights organizations in other countries (CMDPDH, 2019, p. 1). The pronouncements and research to be carried out could make it explicit how, regardless of their *national* label, NHRIs' existence has a permanent and undeniable relationship with international organizations. And that their link is not broken once they are created in a norm and headquarters are inaugurated in the country, but that there must be an international accompaniment in which their capacity to ensure accountability is critically evaluated.

In the meantime, and while modifications are being made to the election mechanism and other procedures that may be affecting the independence of some ombuds institutions, it is deemed advisable to issue a series of recommendations regarding the practice of these State agencies.

In the case of the current Colombian ombudsman, it is considered that, in light of what has been exposed in this document regarding the appropriateness of the directors he has chosen, he should justify in a public and documented manner the suitability -e.g. by means of his experience, professional and academic background- of each of each one of them. This is an act that could contribute to his accountability towards citizenship, which is currently deeply fractured.

To the same end, it is respectfully recommended to cease the practice of hiring as managers or contractors those actors who currently work or have recently worked in the government that appointed him as ombudsman. And that in response to what the SCA said in one of its most recent evaluations (2017, p. 24), he moves forward to ensure that the Political Constitution incorporates an independent and objective removal process for the ombudsperson.

In the case of international actors, it is deemed appropriate to make respectful recommendations to GANHRI and OHCHR. In the case of the former, it is suggested that it design, in conjunction with the OHCHR, new methodologies for the periodic evaluation of compliance with the Paris Principles that take into account the voice of human rights organizations. It is also recommended to review the procedures for the appointment of the GANHRI president and the qualities that an individual must have to attain this position.

And finally, some recommendations are issued to the OHCHR, which has a fundamental role to play, given its historical leadership role in supporting the creation and strengthening of independent bodies that seek to guarantee human rights from the national level (Cárdenas, 2014, pp. 42-44). It is recommended, on the one hand, to design new guidance documents on how to deal with highly politicized ombudspersons, thus encouraging United Nations country teams to play a more incisive role both in modifying election mechanisms when they do not conform to international standards, and in strengthening the horizontal accountability exercised by the NHRI.

And, in light of the existence of cases such as the Colombian and Austrian ones, it is suggested that in the documents the OHCHR issues regarding the functioning of NHRIs, it also provides examples or guidelines of election procedures through which, within different forms of social and political organization, one or more ombudspersons can be elected to ensure independence between them and governments. A variable that is also suggested to be promoted in the agenda led by other specialized offices of the United Nations. More specifically in that of the UNDP, which has rightly focused its attention on the NHRIs within the framework of the Sustainable Development Goals, which could not only promote their creation but also their proper functioning.

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