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Sub-National Human Rights Institutions: A Definition and Typology

Abstract: In this paper, I argue that independent governmental human rights bodies at the sub-national level now comprise a meaningful group that can be understood as a sub-national counterpart to National Human Rights Institutions. In accordance with the term's growing usage among human rights practitioners, I label these bodies as 'Sub-national Human Rights Institutions' ('SNHRIs'). So far, however, SNHRIs (as a general concept) have been the subject of very little academic attention, although there have been many studies of individual SNHRIs or particular types of SNHRIs. With the objective of promoting coherent and generalizable research into this relatively new institutional concept, in this paper I therefore stipulate and justify a general SNHRI definition and a scientific typology of SNHRIs based on administrative level, institutional form, and breadth of mandate.

Keywords: Ombudsman; Human Rights Commission; federalism; typology; National Human Rights Institution

I. Introduction

In this article, I undertake three tasks. First, I argue that there exists a meaningful group of governmental human rights bodies characterized principally by their independence and sub-national mandate. I label these bodies as ‘Sub-National Human Rights Institutions’ (‘SNHRIs’). Second, I stipulate a general definition for SNHRIs, namely that they are *independent non-judicial governmental institutions that possess a sub-national mandate, and whose mission includes the implementation of human rights norms*. This definition is then elucidated at a second level of specificity, with definitional choices justified and hard cases highlighted. Third, I propose a multi-variable typology of SNHRIs. This typology is crafted so as to be comprehensive and exclusive, and is based on three variables: administrative level; institutional type, and breadth of mandate.

My intent in this paper is to lay the groundwork for future research and analysis of SNHRIs.¹ While definition and classification are often neglected undertakings in the human rights literature, they play fundamental roles in the scientific enterprise (Bailey 1994, 1; Frankfort-Nachmias and Nachmias 1996, 28; Sartori 2009, 170). When there are multiple definitions (or a lack of definitions) for a concept being studied, then the extent to which any particular research findings are generally applicable often remains unclear (Frankfort-Nachmias and Nachmias 1996, 27; Gerring and Barresi 2003, 202). Knowledge accumulation and productive argumentation remain difficult (Gerring and Barresi 2009, 241) and comparative studies suffer from the lack of a common framework to conduct research and present findings (Sartori 1970, 1039; Mair 2008, 177). As one researcher notes, “[a]rguably, the most fruitful research programs in social science—those that produce the most knowledge—are those in

which the key concepts are agreed on and defined the same way by all” (Mueller 2003, 162). Typologies are likewise fundamental to academic research. Descriptive social science typologies contribute to “forming and refining concepts, drawing out underlying dimensions, creating categories for classification and measurement, and sorting cases” (Collier et al. 2012, 217). Typologies also allow researchers to understand relationships among related phenomena, and can help highlight under-explored areas (Eppler and Mengis 2011, 7).

It is particularly important to establish an accepted general definition and typology for a concept at an early stage of research into that concept, in order to avoid the evolution of multiple divergent definitions as a research program develops (Mueller 2003, 162; Sartori 2009, 172). National Human Rights Institutions (‘NHRIs’) may in this respect provide something of a cautionary tale: over the past two decades, a large number of (sometime wildly) different NHRI definitions and typologies have been proposed in different situations, with the result being that it is difficult to generalize conclusions from studies that utilize a range of definitions and typologies.² In addition, the first generation of NHRI research largely focused on descriptive analyses of institutional design and effectiveness, with little of the systematic social scientific investigation that one might have expected to see, given the large number of NHRIs and the diversity among them (Cardenas 2012, 32). While there are various possible reasons for this, the lack of an accepted definition and typology that could be used for structured comparisons or the construction of a large-*n* dataset has arguably contributed to this research underdevelopment, and

² According to one report, “there are as many typologies of NHRIs as papers written about them” (International Council on Human Rights Policy, 2005: 6).

by extension to the widely held view that NHRIs are still “undertheorized and not well understood” (Goodman and Pegram 2012, 3).³

With regards to the SNHRI concept however, academic research is indeed in its earliest stages. With a few exceptions, academic books and articles have only in passing mentioned SNHRIs (Cardenas 2001, 8; Reif 2014, 223) or related terms such as “sub-national human rights bodies” (Petersen 2011, 205), “human rights institutions at a sub-national level” (Carver 2011, 5), or “subnational NHRIs” (Reif 2012, 70). By setting forth a general SNHRI definition and typology, this article will thus allow for a more coherent and helpful research agenda to develop moving forward. While the precise details of a future SNHRI research agenda are impossible to know, some likely directions can be predicted based on existing strands of NHRI research. For example one might expect to see research into the reasons for SNHRI proliferation in the past few decades, just as studies have addressed the analogous question for NHRIs (Cardenas 2014; Koo and Ramirez 2009; Pegram 2010). An accepted SNHRI definition and typology would allow researchers to measure the extent of such proliferation (or compare the degree of proliferation in different jurisdictions) and to explore whether the reasons for proliferation are the same for different types. One might also expect to see research on the conditions leading to SNHRI effectiveness, just as researchers have analyzed the conditions under which NHRIs can be effective (Goodman and Pegram 2012, 2; International Council on Human Rights Policy 2005). An accepted SNHRI typology, however, would help scholars to more clearly delineate the scope of generalizability of their (and other authors’) conclusions on conditions for SNHRI effectiveness in a more precise and nuanced manner.

³ Since 2012, new research into NHRIs has embraced more sophisticated social science approaches, and at least one NHRI data collection project is currently underway (Conrad et al, 2012).

II. SNHRIs as a Meaningful Concept

Over the past three decades, human rights institutions have proliferated at the sub-national level, just as they have done at the national level. To illustrate with a few numbers, there are reported to now be seventy-one regional human rights ombudsmen in Russia (ECRI 2013 40),⁴ thirty-two state human rights commissions in Mexico (Acosta 2012, 433), and twenty-three state human rights commissions in India (Dobhal et al. 2014, 11). At the local level, there are at least 1,000 *personeros municipales* in Colombia (Wolman 2015a, 227) and over forty local human rights ombudsmen in Catalonia (Molin 2010), to pick just two parts of the world.

Like NHRIS, these SNHRIs vary significantly in their power and effectiveness. In at least some cases, however, they appear to have made a meaningful impact in local human rights promotion and prevention. The Hong Kong Equal Opportunities Commission, to give one example, has been called “arguably one of the more effective human rights bodies in the region”; one of its most significant successes was its use of strategic litigation to challenge the system for allocating students to different secondary schools (Petersen 2011, 205). At the municipal level, one example of a human rights friendly policy informed and inspired by an SNHRI is the York (U.K.) Equality Scheme, which was in part based upon a report by the York Fairness Commission’s (Berends et al, 153).

Until very recently, however, these various bodies were seldom conceptualized as exemplars of a general institutional type. Rather, such institutions were simply seen by observers as examples of city human rights commissions or provincial anti-discrimination commissions and the like, as usually defined by administrative level, institutional character and geography.

⁴ The term ‘ombudsman’ is gender-neutral in the Swedish language from which it originates, and this formulation remains in common usage, although some localities have switched to the term ‘ombudsperson’. In this article, I use the term ‘ombudsman’ in a gender-neutral sense.

Research on them has accordingly been generally confined to case studies of specific institutions, or of particular institutional types within a given country or region (see, e.g., Dünser 2004; Saunders and Bang 2007; Vitale 2014; Hong 2015). This perspective is now inadequate, however: there is a need for research into SNHRIs as a general institutional type (in addition, of course, to research into specific institutions or institutional sub-types). This is the case for three primary reasons.

First, the human rights community has, over the past two decades, thoroughly embraced the NHRI concept as a significant institutional category for both research and practical purposes at the national level. At the global level, the UN increasingly encourages NHRI participation and establishment, while the Global Alliance of National Human Rights Institutions (‘GANHRI’) accredits and NHRIs and builds NHRI capacity.⁵ Dozens of political science and law scholars now focus on NHRIs as relevant analytical categories. This focus on NHRIs inevitably brings up questions related to NHRIs’ subnational counterparts. Just as two decades ago, one might reasonably have asked whether findings from ombudsman research conducted at the national level also applies to local ombudsmen, so must scholars ask today whether the voluminous quantity of NHRI research findings accrued over the past twenty years also applies to SNHRIs, how SNHRIs relate to NHRIs, the advantages and disadvantages of SNHRIs compared to NHRIs, and similar questions.

Second, the lines dividing traditional categories of subnational human rights institutions are in many cases becoming blurred. As has happened at the national level, many subnational classical ombudsman institutions have started to see human rights implementation as part of their mission, despite human rights not being part of their mandate. In many Mexican states, human

⁵ GANHRI was formerly known as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (‘ICC’).

rights commissions have been established that resemble traditional *defensores del pueblo* more than classic common law commissions (Gaos 2004, 147). U.S. commissions that formerly concentrated solely on racial discrimination are now being given mandates that encompass the entire human rights corpus (Kaufman 2011, 89). In short, while one can still distinguish between different SNHRI types (which is why a typology is useful), the dividing lines are no longer as distinct as they once were, and the commonalities are greater. There are various reasons for these shifts, but one consequence is that for many purposes it makes sense to study SNHRIs as a general type, because members of different traditional sub-types increasingly share common traits.

Third, SNHRIs are becoming more active at the international level by, for example, participating in UN forums, filing reports on local human rights conditions, and applying for membership at the GANHRI (Wolman 2014). International actors must therefore develop rules and guidelines for this participation, and decide when and how to encourage and support the work of SNHRIs. To a certain extent, this is a work in progress: the UN Human Rights Council is currently engaged in a research project on local governments and human rights (which includes surveys of SNHRIs and other actors), while the GANHRI has struggled with the question of SNHRI membership (Wolman 2015b). But from a conceptual standpoint, it is clear that both these organizations are in the process of developing policy with respect to SNHRIs as a group. Thus, while SNHRIs may still be domestically viewed primarily as local institutional types, at the international level they are increasingly seen as members of a broader global group. As evidence of this shift, one can note the growing contemporary usage of the term ‘sub-national human rights institution’ by important international actors such as the UN Secretary General (2011, para. 95), the High Commissioner of Human Rights (Pillay 2011; UNHCHR 2011), the

UN Special Rapporteur on Adequate Housing (Farha 2014, para. 76(j)), and UNICEF (2013, 105). Other prominent human rights actors have used (presumably) similar phrases such as “regional and local human rights institutions” (Hammarberg 2009, para. 7.2), “local human rights institutions” (Kang 2012), “sub-national statutory human rights institutions” (ICC 2013, 25; APF 2015, 23), and “independent and autonomous ombudsman, mediator and other national human rights institutions at...the local level” (UNGA 2013). To put it simply, SNHRIs may not yet be the focus of academic research, but the SNHRI is already a concept that is used by human rights practitioners.

In addition to justifying a focus on SNHRIs as a meaningful concept, it is worth briefly justifying the usage of the term ‘SNHRI’ as a label for this concept. As a starting point, the term strives for familiarity. As Gerring (1999, 368-369) notes, finding a term in the existing lexicon that covers a concept is generally a better option than coining a neologism. As noted, the term ‘SNHRI’ has been used by important actors. However, other similar terms have also been used. The term ‘SNHRI’ has a particular resonance and clarity that these other potential terms lack, though. It is resonant because it mirrors the terminology commonly used at the national level (‘NHRI’) and to a lesser extent the international level (‘regional human rights institution’). It is clear because the term ‘sub-national’ can immediately be understood as covering the entire administrative space below the nation-state (and only that space), while the term ‘local’ is sometimes used to denote solely municipal (and not higher level sub-national) space, and the term ‘regional’ can be used both for sub-national and supra-national space.

III. Definition

Despite the fact that the SNHRI concept is meaningful and it (along with similar terms) has been used by practitioners in recent years, there is no accepted definition for the term. This

section stipulates a general definition for the term ‘SNHRI’. As a ‘general’ definition, it should be usable for any research purposes involving SNHRIs. It should also be usable by practitioners, although influencing the public discourse is not the primary focus of this article.⁶ This proposed definition will be ‘minimal’ in the sense that it seeks to “identify the bare essentials of a concept, sufficient to differentiate it extensionally without excluding any of the phenomena generally understood as part of the extension” (Gerring 2011, 135). In the context of this article, that means that my stipulated definition will apply to all SNHRIs and will not apply to any entities that are not SNHRIs. This is appropriate for facilitating academic research, which is this article’s objective. It is worth noting, however, that ideal-type definitions may be better suited for other purposes, such as promoting best practices (one example being the use of the Paris Principles to define the universe of NHRIs).⁷

The SNHRI definition is intended to fulfill four objectives. First, it is intended to approximate a general understanding of the SNHRI concept as constituting the sub-national equivalent of NHRIs. This understanding, which is stipulated in this article, is in line with existing usage of the concept (and term), which usually takes place in the context of discussion or research on NHRIs. This approximation does not lead to a neat end point, however, as the term ‘NHRI’ itself has itself been notoriously hard to define (Reif 2012). Second, it is intended to facilitate further academic research into the subject. This largely means stipulating a definition that allows researchers to feasibly identify whether an entity is or is not an SNHRI (i.e., is easily

⁶ For example, without a general ‘SNHRI’ definition, listeners will not know what institutions the UN Secretary General was referring to, when he stated that “[i]nteraction by subnational human rights institutions with the international human rights system [are] strongly encouraged.” (UNSG 2011, para. 95).

⁷ The Paris Principles are a set of guidelines for national institutions promulgated by the UN in 1993, which have been used to assess the mandate, autonomy, independence, pluralism, resources, and investigative powers of NHRIs (UNGA 1993).

operationalizable) and promoting group stability, so that entities will only rarely transition from SNHRI status to non-SNHRI status. Third, it strives for parsimony. As Gerring (2011, 34) notes, “good concepts do not have endless definitions.” Fourth, the definition is intended to be as precise as possible. This goal is consistent with the objective of facilitating academic research; as Rowe and Frewer (2005, 252) state, “[t]he more precise our definitions, the better (more reliably, validly) we can conduct research, the easier it is to interpret findings, and the greater the confidence we can have in our conclusions.” A precise definition does not end debate as to whether a particular entity possesses all the criteria of an SNHRI, however it can at least reduce or eliminate uncertainty as to what those criteria actually mean.

Pursuant to the first of these objectives, it makes sense to use common NHR definitions as a starting point for an SNHRI definition. Many have been proposed. NHRs have been defined, *inter alia*, as: “independent bod[ies] established by a national government for the specific purpose of advancing and defending human rights at the domestic level” (Pohjola 2006, 1), “independent bodies that promote and monitor states’ implementation of and compliance with their obligations to protect human rights” (Dam 2007, 1), “[s]tate bodies with a constitutional and/or legislative mandate to protect and promote human rights ... [that] are not under the direct authority of the executive, legislature or judiciary” (UNHCHR 2010, 13), and “official independent legal institutions established by the State by law for the promotion and protection of human rights” (APF 2015, 15). Oftentimes, NHRs are simply defined as those entities that comply with the Paris Principles, as fleshed out by the General Recommendations of the GANHRI (Reif 2012, 53). However, while this may be satisfactory for defining the universe of NHRs in some instances, it is unworkable for SNHRs. The Paris Principles by their terms only apply to national-level institutions, and the GANHRI (with an exception for the Scottish and

Northern Ireland Human Rights Commissions) has not accepted sub-national bodies for full membership.⁸

At their core, however, most NHRI definitions seem to contain three elements: independence; a link to the state (governmentality); and a focus on implementation of human rights norms. These three concepts – along with the sub-national level of operation – thus also form the core of my proposed definition, which is that an SNHRI is an *independent non-judicial governmental institution that possess a sub-national mandate, and whose mission includes the implementation of human rights norms*. While this definition should be adequate for a shorthand understanding of the SNHRI concept, it is intentionally parsimonious, and in the remainder of this section, I will elucidate the different elements of this definition. Specifically, I will focus on four tasks. First, I will justify the use of each term that is contained in my definition. Second, I will draw out the relevant terms at a second level of specificity, by proposing and justifying criteria that can be used to empirically establish whether the given term does or does not apply to a particular entity. Third, I will discuss the real-world definitional implications of certain terms with respect to particular entities’ inclusion or exclusion from the SNHRI definition. And fourth, I will where relevant acknowledge hard cases or limitations of the term’s usage.

A. *Independent*

Perhaps the most important distinguishing characteristic of NHRIs is their independence (Reif 2012, 52). Independence represents one of the fundamental aspirational values of the Paris Principles, and has been made explicit in multiple NHRI definitions (Pohjolainen 2006, 1; Dam 2007, 1; APF 2015, 15). The precise meaning of independence is not clear, however. At a

⁸ The Paris Principle uses terms such as “national institution” and “national legislation” and states that NHRIs should pay attention to human rights violations in “any part of the country” (UNGA 1993).

minimum, it means that an SNHRI should not operate under the direct authority of other governmental entities. In the case of NHRIs, however, some would go further to require a *de facto* absence of governmental influence into an institution's actions. For SNHRIs, however, a definition that relies on *de facto* independence would not benefit group research. For one thing, there is no outside body such as the GANHRI to judge whether SNHRIs are *de facto* independent or not. Thus a researcher would be forced to individually evaluate each entities *de facto* independence, a herculean task given the thousands of SNHRIs in the world and difficulty in evaluating the level of governmental influence in their actions. In addition, the reliance on *de jure* rather than *de facto* independence leads to a more stable group. This is generally a benefit to research analysis; without such stability, one would have to recalibrate group membership constantly.

Among the implications of the independence requirement is that a state or local governmental agency should not be considered an SNHRI (as, indeed, a national governmental agency would not be considered an NHRI). Several U.S. States possess human rights "divisions" or "agencies" that for this reason would for this reason not be considered SNHRIs. Another implication is that the local branch offices of NHRIs would not be considered SNHRIs, because they are not independent institutional entities. SNHRIs that are appointed by the executive but operate autonomously present a tricky classification, with actual independence depending on local administrative culture, length of term, and ease of dismissal, among other factors. However, these factors are hard to measure, and in line with the emphasis on *de jure* rather than *de facto* independence, I would argue that it makes sense to consider executive-appointed autonomous bodies to be independent as they are not normally intended to take instructions from government officials.

B. Non-Judicial

It is undisputed that courts are not NHRIs, although the two types of institutions share some similarities, such as independence, and courts often address human rights issues. This distinction is omitted in some NHRI definitions, perhaps because it would be considered an obvious point. Other scholars make this provision explicit, however (Reif 2004, 7), or specify that NHRIs are “administrative” bodies, which can be taken to mean non-judicial (Cardenas 2014, 2). This same distinction should also apply at the sub-national level. This means that sub-national human rights courts, as exist in India, Ontario, and elsewhere, would not be considered SNHRIs. On the other hand, where sub-national institutions issue non-binding rulings on human rights complaints outside of the judicial context, then they would be considered SNHRIs. Operationally, the distinction between courts and SNHRIs will usually be quite easy for the researcher to make based on institutional title: entities called courts and tribunals will generally be judicial in nature. Similarly, judicial officers will generally be called judges, tribunal officers or the like, while these terms will not normally be used for SNHRI workers.

C. Governmental Institutions

NHRIs are widely accepted to be ‘governmental’, in the sense that they are established by government (whether through statute, constitution or executive decree), funded through the governmental budget, and staffed wholly or partially by civil servants (UNHCHR 2010, 13). SNHRIs, thus, should also share this ‘governmental’ status. This means that local NGOs or community organizations, even those that attempt to be representative in nature, would not be considered SNHRIs (just as their national counterparts would not be considered NHRIs). In the sub-national context, measuring governmentality may be more complex than at the national level, however, because one would be more likely to find government-formed or sponsored institutions

that are operated solely by non-civil servants, examples being Japan's Human Rights Protectors and many U.S. municipal human rights commissions. It may also be possible to find human rights institutions that are entirely lacking in government funding, especially at the very local level. Given these peculiarities and this definition's emphasis on parsimony, it makes sense to distinguish governmentality in the SNHRI context based solely on whether or not a human rights institution is governmentally established (whether by constitution, statute or decree). From an operational perspective, this criteria facilitates research because information on whether an institution is governmentally established or not can usually be located relatively easily by looking for the existence of an organic law, which is often posted on the institution's website.

D. That possess a sub-national mandate

The term 'sub-national' is understood here to encompass "entities that are *smaller* than the nation (and not *under* or *below* it), such as regions, provinces, municipalities, member states of a federation, or cantons" (Homem de Siqueira 2010, 4, italics in original). Thus, although SNHRIs may sometimes be established by national-level legislation or decree, they in all cases focus their domestic human rights work in a jurisdictional sphere that is narrower geographically than the entire nation. SNHRIs may occasionally participate in international mechanisms or issue statements on overseas human rights abuses, just as some NHRIs do, but their domestic mandate must be restricted to a sub-national administrative space; this is evidently the most significant distinction between SNHRIs and NHRIs.

While in most cases, it will be relatively simple to distinguish whether a human rights institution should be considered 'national' or 'sub-national', there will occasionally be difficult cases. For example, in some cases there will be human rights institutions in entities that are not universally recognized as nations, such as the Kosovo Ombudsman or Palestine's Independent

Commission for Human Rights. There may also be institutions operating on entities that are universally unrecognized as states, but arguably possess the necessary attributes of statehood; examples include the Taiwanese Control Yuan and Somaliland Human Rights Commission. Finally, there are institutions located in entities that are sometimes called ‘nations’, even though they are clearly not nation-states under international law (such as Quebec, Scotland, or Native American nations). From an operational perspective, the easiest and most acceptable way of distinguishing nation-state status (and by extension sub-nationality) would be through an examination of UN membership status. If an entity is a member state or non-member observer state of the UN, then it should be considered a nation, and its human rights institution (if it has one) should be considered an NHRI. If, on the other hand, an entity is not a UN member or non-member observer state, and is not supra-national in scope (i.e., composed of more than one nation), then its human rights institution should be considered a SNHRI.

Another difficult question of classification arises with centralized human rights institutions that cover most of a nation’s territory, but not all of it. One example of this is the Equality and Human Rights Commission, which operates in England, Wales, and (for some issues) Scotland, but not in Northern Ireland (or, for that matter, in the U.K.’s Overseas Territories and Crown Dependencies). In practice, it seems appropriate to classify such institutions as NHRIs rather than SNHRIs, as long as they have been established by the national-level government (as with the Equality and Human Rights Commission, established by the U.K. Parliament’s Equality Act 2006) and have a mandate that covers the majority of a nation’s population. This choice is justified by the prerogative of avoiding overlap between the class of institutions normally recognized as NHRIs (such as the Equality and Human Rights Commission) and the class recognized as SNHRIs.

E. Mission includes

By stating that human rights implementation must be ‘included’ in the institution’s mission, this formulation implies that an SNHRI may have other missions besides human rights implementation. Thus, under this definition, those ombudsman offices that have a mission that includes human rights implementation (as well as addressing maladministration, corruption, etc.) would be considered SNHRIs. This is consistent with certain statements of the UN General Assembly, Committee on Economic and Social Cultural Rights, Committee on the Rights of the Child and many European actors that classical ombudsman institutions at the national and sub-national level can be considered NHRIs, despite the fact that their work is not confined to solely human rights issues (Reif 2012, 55; 71-72). It does, however, run counter to the GANHRI’s practice of refusing to fully accredit classical ombudsman institutions or refer to them as NHRIs (Reif 2012, 71). A separate question is whether the human rights missions must be explicit in the institution’s mandate. I would argue that an explicit human rights mission should be considered unnecessary. From a functional perspective, it seems illogical for an SNHRI definition to exclude those institutions that have evolved a practice of human rights implementation, simply because their organic legislation does not explicitly refer to human rights. The downside of this choice, however, is that it complicates classification, as it is more difficult to examine an institution’s practice than simply review its organic statute or decree, and it forces a somewhat arbitrary decision of how much human rights implementation is required to turn a classical ombudsman institution into an SNHRI. In practice, however, the large majority of classical ombudsman institutions are likely to be involved in human rights protection (broadly understood), even if this is often confined to implementation of administrative procedure rights (Remac 2013, 66).

F. Implementation

The term ‘implementation’ has been used to cover broadly the different ways in which sub-national institutions use human rights in their work, including protective tasks, such as complaint-handling, promotional tasks such as education, advocacy, and awareness-raising, along with human rights monitoring and advising. This is consistent with the Sepulveda et al. (2004, 67) definition of ‘implementation’ as “all initiatives taken...to enhance respect for human rights and prevent violations”, as well as the broad scope given to the phrase ‘human rights implementation’ by some scholars writing about NHRIs (De Beco 2010, Baik 2012).⁹ I consciously avoid the phrase ‘promotion and protection’, which has occasionally been used in NHRI definitions (APF 2015, 15). First, the term ‘promotion and protection’ has always been a rather confusing formulation that leaves uncertainties as to what activities actually fall under each rubric. Second, the conjunctive term ‘promotion and protection’ is often used to encompass both awareness raising activities and complaint handling activities. In practice, however, SNHRIs tend to be smaller than NHRIs in budgetary and staffing terms, and therefore it is more common for SNHRIs to focus solely on one or the other types of tasks (while still being widely seen as human rights institutions).

G. Human rights norms

The proposed definition concludes by noting that implementation can involve ‘human rights norms’. By not specifying that ‘all’ human rights norms must be implemented, this clause thus implicitly includes within the SNHRI definition those bodies that focus on a subset of the human rights corpus, such as anti-discrimination, women’s rights, administrative rights, or

⁹ Other scholars, however, use the term ‘implementation’ more narrowly, to refer to legislative actions or programmatic initiatives to facilitate the enjoyment of human rights in a community, which are undertaken alongside human rights ‘protection’ (complaint handling) or ‘promotion’ (training or awareness-raising).

children's rights. One difficult issue is whether bodies that implement 'civil right' or 'constitutional right' norms should be considered human rights institutions. In practice, it will likely be very rare for such organizations to entirely ignore human rights language in today's world, but from a functional perspective, the language used seems of little importance; the important thing is that human rights norms are being implemented, regardless of their specific legal source or the name used.

On the other hand, it does seem logical (and consistent with NHRI definitions and general usage) to require that entities explicitly implement human rights of some sort (whether from international, national or local sources) in order to qualify as an SNHRI. Thus, while an electoral commission clearly furthers the implementation of political rights, it normally would not explicitly rely on human rights norms or rights discourse in its day to day work. It would therefore not be an SNHRI. Similarly, an anti-corruption commission that relies on administrative law, but not 'human rights' as such, would not be considered an SNHRI, even though anti-corruption work can reasonably be formulated as the promotion of a right to good governance.

IV. Typology

While SNHRIs present a useful concept for study, they also vary in significant ways. Academic research should take into account these different types where relevant. This section therefore proposes a general typology of SNHRIs with the objective of facilitating research into SNHRIs.¹⁰ As with the proposed definition, this proposed typology will comply with the basic rules for social science classifications. Thus, this typology is constructed so as to be

¹⁰ As with my proposed definition, a secondary objective of this typology is to promote greater clarity in the public discourse surrounding SNHRIs. Typologies can assist communication by allowing for greater linguistic precision when referring to specific subsets of the broader concept.

comprehensive and non-exclusive, meaning that all possible SNHRIs can be categorized in one (and only one) of the possible types and the typology will aim for the minimization of within-group variance and maximization of between-group variance (Kluge 2000, para. 2).

Within those parameters, this typology is also constructed so as to be relevant, parsimonious and feasible. Relevance means that the divisions resulting from this typology should correspond to divisions that are most likely to be studied by researchers. Parsimony means that the divisions created by this typology are kept at a minimum, so as to avoid overwhelming the researcher with relatively insignificant distinctions. Feasibility means that researchers should be able to categorize SNHRIs within one of the possible types using readily accessible information.

Pursuant to these objectives, this article proposes a SNHRI typology based on three dimensions, namely administrative level, institutional form, and breadth of mandate. These dimensions were chosen for four reasons. First, they correspond to common ways of classifying NHRIs and other human rights institutions (thus facilitating comparative research). Second, they correspond to common categories of existing sub-national research, allowing for a better understanding of the applicability of existing research to particular types of SNHRIs. Third, these dimensions to a certain extent describe distinct institutional histories, functions and mandates, thus promoting the goal of minimizing within-group variance. And fourth, these dimensions can be relatively easily measured by researchers, unlike, for example, capacity, effectiveness, or *de facto* independence, all of which are important attributes but very difficult to measure. The typology presented will be a nominal taxonomy, with three administrative level categories, two institutional form categories (which are sub-divided into a total of five sub-categories), and three breadth of mandate categories. This allows for eighteen possible first-level

institutional types, or forty-five possible types when the second-level institutional form categories are used.

Each of these proposed categories will be delineated with precision below, while providing illustrative examples. I will then note if there are any commonalities or typical characteristics of each type. This is important as a means of justifying the choice of categories: good typological categories will highlight similarities among types in a category that go beyond those distinctions stipulated in the typology itself (Kaplan 1964, 51). The proposed typology differs from common NHRI typologies in two important ways. First, it is a multi-variable typology. This contrasts with NHRI typologies, which generally classify NHRIs based on one variable, often labeled as institutional type (see, e.g., Kjeorum 2003, 8-9; Pohjolainen 2006, 16). Second, it is logically exclusive. Typical NHRI typologies denote a selection of established institutional types (such as ‘human rights ombudsman’ or ‘human rights commission’), while neglecting to categorize logically conceivable institutions that fall outside these categories.

A. Administrative Level

SNHRIs have been established at many different sub-national levels, including villages, towns, counties, states, oblasts, provinces, cantons, and regions. As will be discussed below, SNHRIs tend to have somewhat different histories, functions, and characteristics, depending on the administrative level at which they operate, so administrative level presents an obvious dimension to distinguish SNHRI types. It is difficult to neatly delineate categories, however, because the names, powers, sizes, and governmental structures of sub-national administrative levels vary quite widely by country (and in some cases, even within a country). For the purposes of SNHRI classification, this typology proposes three relevant administrative levels, labeled as provincial, local, and autonomous regional levels. Each of these are defined and described below.

1. Provincial SNHRI

The first category encompasses SNHRIs established at the highest standard sub-national governmental level, labeled here as ‘provincial SNHRIs’. Of course, different countries have very different terminology for administrative divisions, and U.S. states, French *départements*, German *Länder*, etc., are all considered ‘provinces’ for the purpose of this typology.¹¹ Examples of provincial SNHRIs include the Karnataka State Human Rights Commission (India), the Victoria Ombudsman (Australia), and the *Sindic de Greuges de Catalunya* (Spain).

While provincial SNHRIs exist in a variety of locations, they are particularly common in two types of countries. First, provincial SNHRIs are often found in countries where the highest sub-national administrative subdivisions possess significant policy-making powers and administrative autonomy, as is the case with federal or devolved systems of government. This is unsurprising, as division of powers reasons would suggest that such communities would be likely to favor autonomy in human rights implementation. Thus, for example, all or most provinces (or their equivalent) in Mexico, Russia, Argentina, the United States, Australia, and Spain possess SNHRIs.

Provincial SNHRIs also tend to show certain common characteristics. In most nations with provincial SNHRIs, the SNHRIs are of the same institutional form at the provincial level as the NHRI at the national level (i.e., commissions or ombudsmen), and interact with the NHRI in a variety of ways (Wolman 2013). In some cases (most notably Russia, India, and Mexico), the NHRI establishing legislation also authorizes the establishment of SNHRIs at the provincial level. SNHRIs at the provincial level tend to be larger than local SNHRIs, and, relative to local

¹¹ Conversely, the *Provincias* in Spain or *Provinces* in Belgium would not be considered ‘provinces’ for the purpose of this typology, because in each case there exist a higher sub-national administrative level.

SNHRIs, it is more common for provincial SNHRIs to actively engage in international human rights mechanisms (Wolman 2014).

2. Local SNHRIs

The label ‘local SNHRIs’ refers to SNHRIs established at a standard sub-provincial administrative subdivision (i.e., at the second or lower level of sub-national administration). This can include SNHRIs in counties, cities, towns, villages, and other similar administrative designations. Examples include the Boston Commission for Persons with Disabilities (USA), the *Personería Municipal de Santiago de Cali* (Colombia), and the Barcelona Human Rights Observatory (Spain). Local SNHRIs are quite common in cities big and small in the United States, Colombia, Argentina, and Italy. Elsewhere, local SNHRIs have tended to be established in larger cities (such as Montreal or Seoul), and in certain municipalities that want to promote their connection to human rights in a visible way, such as Gwangju (Korea) or Graz (Austria). Local SNHRIs can also be established at the village or neighborhood level; this is quite common in Japan and the Philippines.

In the United States, municipal race relations commissions (many of which eventually evolved into human rights commissions) existed prior to World War II (Saunders and Bang 2007), but in other countries, local SNHRIs tend to be more recently established. The first local classical ombudsman was established in 1967 in Jerusalem, and it is only in the post-Cold War era that local ombudsmen with an explicit human rights mandate have become common (Danet 1989, 16). Local SNHRIs are frequently of a different institutional type than the home country’s NHRI; for example Gwangju and Yogyakarta have ombudsmen, while Korea and Indonesia have human rights commissions. While there are certain exceptions (such as Colombia, where each municipality is required to have a *Personero Local* (Program Presidencial de Derechos Humanos

y DIH 2009, 20)), in general, local SNHRIs are unlikely to be required by legislation at higher administrative levels, and are more likely to emerge from local initiatives.

3. Autonomous Region SNHRIs

Finally, there are a number of SNHRIs established in sub-national regions that can be qualified as non-standard because they possess a significantly higher degree of autonomy than similarly situated administrative units in a particular country. These are here termed ‘autonomous region SNHRIs’. One sees a relatively high frequency of SNHRIs in autonomous regions. Examples include the Hong Kong Equal Opportunities Commission (China), the Northern Ireland Human Rights Commission (UK), and the Åland Discrimination Ombudsman (Finland). This frequency is unsurprising; in these places, the NHRI (if there is one) might be distant, mistrusted, or lacking in authority to influence regional actors.

SNHRIs in autonomous regions tend to be similar to NHRIs in their function and mandate, as one would expect given the greater regulatory powers of autonomous entities. Autonomous region SNHRIs are not generally relegated to a level hierarchically below the NHRI, as is sometimes the case with other NHRIs at the provincial level (Wolman 2013). They also tend to be relatively active internationally, and, in a few instances, have applied for accreditation by the GANHRI (Wolman 2015b, 124-125).

B. Institutional Form

Institutional form is the variable that is most commonly used to typologize NHRIs, although the number of institutional forms that are specified varies widely. Some scholars note two types: national commissions and national ombudsmen (Steinerte and Murray 2009, 54-56; Cardenas 2014, 9). Others have broken down NHRIs into three categories (Centre for Human Rights 1995, 7-8), four categories (Pohjolainen 2006, 16), or even five or six (International

Council on Human Rights Policy 2000, 4; Kjeorum 2003, 8-9), by including other institutional forms such as advisory committees on human rights, human rights ombudsmen and specialized institutions. These typologies are generally non-comprehensive, however, because it is logically possible for an NHRI to exist that does not fall into any of these types as normally defined.

For the sake of feasibility and comprehensiveness, this typology opts for a somewhat different strategy, by dividing SNHRIs into monocratic institutions and multi-person institutions. For many research purposes, this distinction will be sufficient. One might, for example, be interested in comparing whether multi-person institutions are more effective than monocratic institutions or receive greater support from the local population.¹² In some instances, however, more precision will be helpful when dealing with institutional forms. For example, one might want to explore whether certain research findings related to national classical ombudsmen are also true for sub-national classical ombudsmen. Therefore, these two higher-level categories are divided into five sub-categories, namely classical ombudsmen, human rights ombudsmen, and idiosyncratic institutions (which are all monocratic), and human rights commissions and human rights councils (which are multi-person). These are detailed below.

1. Monocratic Institutions

For the purposes of this typology, monocratic SNHRIs (defined as single-person SNHRIs or SNHRI offices managed by a single person) are categorized as one institutional form. There is a high degree of within-group similarity among monocratic SNHRIs. While there is some variation in their functions, powers, mandates, and appointment procedures, the vast majority of these institutions would self-identify as ombudsman institutions, or some variants thereof (although they go by many different names, such as *Defensores del Pueblo*, *Provedores de*

¹² At the national level, this monocratic/multi-person typology is utilized by Conrad et al. (2012, 10) in their NHRI dataset (although labeled as ombudsman/human rights commissions).

Justiça, Difensori Civici, and Médiateurs. Conversely, virtually all self-identified ombudsman institutions would be contained within this category, as ombudsman institutions are almost always monocratic (Cardenas 2014, 9) and are occasionally defined as such (Colín and Colín 2007, 190). The individual ombudsman may head an institutional entity or be given resources to appoint a staff, but this is not always the case, especially at the local level.

As (in large part) ombudsman variants, most monocratic SNHRIs share a common heritage. Ombudsman institutions originated in Sweden in 1809, and spread throughout Scandinavia over the next 150 years before spreading to other regions of the world in the 1960s (Reif 2004, 1). At the sub-national level, municipal ombudsman first emerged in Europe in the 1970s,¹³ and while sub-national ombudsmen may not have engaged with human rights to a significant extent at that time, over the last two decades many have begun to explicitly implement human rights norms, not only in Europe (Pihlajassari and Skard 2011, 9-10), but also in Latin America (Van Leeuwen and Merino 2008, 11; 15) and, increasingly, Asia.¹⁴ At their most basic level, ombudsmen are independent governmentally appointed actors tasked with supervising the executive's administrative activities, through receiving and investigating complaints from the public and making non-binding recommendations on the resolution of those complaints (Reif 2004, 1-2).

Beyond that very basic level, ombudsman institutions have evolved considerably from their Swedish roots, such that the broad institutional form now encompasses many different variants. While traditionally ombudsmen were selected by the legislature, contemporary ombudsmen are sometimes appointed by the executive or (rarely) directly elected (Reif 2004, 30-

¹³ Europe's first local ombudsman institution was established in Zürich in 1971 (Dünser 2004).

¹⁴ For example, Korea now has thirteen local human rights ombudsmen (Korea Human Rights Foundation 2014, 208-211).

31). In addition to sub-national and national ombudsmen, there are now ombudsmen at the supranational level (U.N. and E.U.), as well as in private sector organizations and individual departments or ministries of larger organizations (Reif 2004, 26-28). There are ombudsmen with general competencies, as well as those that focus on specific subject areas. Most importantly for present purposes, there are ombudsmen who are mandated to protect human rights and those that are not. This is highlighted below as a distinguishing factor for second-level categories.

a. Classical Ombudsman Institutions

Classical ombudsman institutions can be defined as monocratic SNHRIs that are ombudsman institutions, and whose mandate does not explicitly mention human rights. The existence or non-existence of an explicit human rights mandate mirrors definitions sometimes given to classic ombudsman institutions at the national level, which is important in order to promote comparative research that deals with both national and sub-national entities (Saari 2010, 33). This criteria has also been previously used to distinguish between classical and human rights ombudsmen at the sub-national level (Stuhmcke 2011, 43).

Consistent with their institutional heritage, classical ombudsmen are focused on resolving complaints of administrative wrongs, most notably governmental acts of administrative unfairness, noncompliance with the law, and maladministration (Tai 2010, 2). Of course, in doing so classical ombudsmen may simultaneously be addressing human rights violations (Reif 2004, 2). Despite this fact, some classical ombudsmen avoid using human rights in their work altogether, especially in the Asia-Pacific region and areas with common law legal systems (Burdekin 2007, 86). Many other classical ombudsmen do implement human rights norms in their work, despite the lack of an explicit mandate, especially in continental Europe (Dünser

2004). Some examples of classical ombudsman SNHRIs include the Hong Kong Ombudsman, the Saskatchewan Ombudsman and the *Québec Protecteur du Citoyen* (Reif 2004, 393).

b. Human Right Ombudsman Institutions

Human rights ombudsman institutions have been defined as ombudsman institutions that have an explicit human rights implementation mandate (Byrnes and Renshaw 2014, 472). In addition to the resolution of human rights violation complaints, human rights ombudsmen may also engage in human rights documentation, policy research, government advising, and educational activities. This human rights mandate usually is present in addition to (and not instead of) the administrative fairness and legality mandate common in classical ombudsmen (Pegram 2010, 736). In terms of composition, appointment procedures and basic functions, there is little to separate human rights ombudsmen and classical ombudsmen (Pegram 2010, 736).

At the national level, human rights ombudsmen date back to the 1970s democratization movements of Southern Europe and the establishment of the Portuguese *Provedor de Justiça* and the Spanish *Defensor del Pueblo* (Reif 2004, 8). Since that time, human rights ombudsmen have been established with particular frequency throughout Latin America and Central and Eastern Europe, both at the national and sub-national levels (Reif 2004, 9). To a lesser extent, there has been some movement of sub-national institutions from the classical ombudsman institution category to the human rights ombudsman category due to legislative revision of their mandates (Reif 2011, 271-272). With a few exceptions, human rights ombudsmen are found today in civil law jurisdictions (Reif 2011, 272). Examples include the Ombudsman for Children of the Republic of Srpska (Bosnia and Herzegovina), the *Defensor del Pueblo de la Ciudad de Buenos Aires* (Argentina), and the Puerto Rican *Oficina del Procurador del Ciudadano* (USA).

c. Idiosyncratic types

While it is true that the vast majority of self-identified ombudsman institutions are monocratic, it is not necessarily the case that all monocratic SNHRIs are ombudsmen. Thus, in order to maintain its logical comprehensiveness, this typology must allow for the possibility of non-ombudsman monocratic SNHRIs through the creation of a catch-all category, labeled here as idiosyncratic types. In practice, however, non-ombudsman monocratic SNHRIs are rare or non-existent in most parts of the world. Two exceptions are Japan and the Philippines, where Local Human Rights Protectors (in Japan) and Barangay Human Rights Action Officers (in the Philippines) are widespread. In each country, there are in fact several thousand such institutions at the neighborhood level, with office-holders explicitly mandated to engage in human rights promotion and education as well as handling complaints from the public (Koike 2014, 80; Commission on Human Rights of the Philippines 2009, 60).

2. Multi-person SNHRIs

Multi-person SNHRIs are the logical counterpart to monocratic institutions. Given the wide diversity in multi-person SNHRIs, they can perhaps most easily be characterized in reference to their contrasts with monocratic ombudsmen. For one thing, they do not all handle complaints from the public (although some do). In addition, they are more likely to focus on other civil society actors as well as governmental human rights abuse (Centre for Human Rights 1995, 9; Tai 2010, 7) and they are more likely to address economic and social rights issues than are ombudsmen. Multi-person SNHRIs are also by their nature more able to be pluralistic in their make-up, including in many cases through the appointment of non-governmental members. While this broad category will suffice for most research purposes, multi-person SNHRIs can also be divided into two sub-types, based on function, here labeled as human rights commissions and human rights councils.

a. Human Rights Commissions

Multi-person SNHRIs that are primarily concerned with human rights protection (complaint handling) or promotion (including awareness raising, and the provision of education or training) can be classified as ‘human rights commissions’. Examples would include the Eugene (Oregon) Human Rights Commission (USA), the Kerala State Commission for Protection of Child Rights (India), and the Cayman Islands Human Rights Commission (UK). Human rights commissions are most common at the national level in countries with a common law tradition, and the same is true at the sub-national level. At the state or provincial level, human rights commissions have existed for at least twenty years in the United States, Canada, India and Australia. Outside of the United States, commission forms tend to be less common at the local level.

b. Human Rights Councils

On the other hand, multi-person SNHRIs that are primarily concerned with human rights monitoring or advising the government on human rights issues (which are often two sides of the same coin), can be classified as ‘human rights councils’. Examples include the Advisory Council on Human Rights of the City of Graz (Austria); the *Observatorio de Equidad de Género de Buenos Aires* (Argentina), and the *Conselho Permanente dos Direitos Humanos do Estado do Paraná* (Brazil). Human rights councils are usually relatively new creations, and some have emerged as a result of transnational initiatives such as the Human Rights Cities movement (Oomen and Baumgärtel 2014). In Argentina and Brazil, issue-specific sub-national human rights monitors have also been formed to monitor the treatment of prisoners in detention facilities. These institutions were established in order to comply with the Optional Protocol for the

Convention Against Torture, which requires that state parties designate or establish one or several independent national preventive mechanisms.

C. Breadth of Mandate

The third dimension that is measured in this SNHRI typology is the breadth of the institution's human rights mandate. This is broken down into three categories, namely broad-based SNHRIs, anti-discrimination SNHRIs, and single-issue SNHRIs. Breadth of mandate is an important dimension for functional reasons, as it relates to the types of issues an SNHRI addresses, the sources of law that it uses, and in some cases even the peers that an SNHRI networks with, as there exist separate trans-governmental networks for children's ombudsmen or anti-discrimination commissions.

1. Broad-based SNHRIs

Broad-based SNHRIs can be defined as SNHRIs that implement a broad range of different types of human rights. In most cases, their mandate will include both civil and political rights and economic and social rights. Sometimes the scope of the mandate is explicitly calibrated to international instruments such as the Universal Declaration of Human Rights and/or human rights treaties ratified at the national level (Wolman 2015a 229-231). In many other circumstances, however, the sources of human rights are not specified, but rather the commission is left to self-define the exact types of rights included in its mandate (Wolman 2015a 233-234). Broad-based SNHRIs tend to be relatively recently established, and are particularly common in Europe and Latin America. In some cases they exist alongside more specialized SNHRIs (often dealing with women's or children's rights) or may have sub-offices that specialize in particular types of rights. Examples of broad-based SNHRIs include the Seattle Human Rights

Commission (USA), the Independent Commission for Human Rights in the Kurdistan Region (Iraq), and the *Conseil Lyonnais pour le Respect des Droits* (France).

2. Equality SNHRIs

The second category proposed is equality SNHRIs, defined here as SNHRIs that implement general equality or non-discrimination rights, but not other types of human rights. Examples include the Anti-Discrimination Commission of Queensland (Australia), the Humboldt County (CA) Human Rights Commission (USA), and the Espoo Equality Committee (Finland). In most cases, equality SNHRIs are commission-form institutions, although there are some ombudsman examples. Equality SNHRIs are most prevalent in common law countries, where they tend to have a relatively long history (Dam 2007, 2). However, there is a trend in common law countries towards the broadening of mandates, and some former equality commissions in the U.S. and Canada now deal with the full range of human rights norms (Wolman 2015a, 230).

3. Issue-Specific SNHRIs

There are other SNHRIs that have mandates that are confined to one particular substantive issue or protected group, labeled here as issue-specific SNHRIs. Examples include the Alexandria (VA) Commission on Persons with Disabilities (US), the Shizuoka City Gender Equality Advisory Committee (Japan), and the Madrid *Defensor del Menor* (Spain). The most common issue that SNHRIs focus on is children's rights. Sub-national commissions and ombudsmen specializing in children's rights have become increasingly common all around the world in recent years, following their earlier establishment at the national level (Ruggiera 2013, 71). Many of these Commissions are guided by international norms, especially the CRC (Wolman 2015a 230-231). As is the case on the national level, there are many cases of single issue SNHRIs existing alongside broad-based or equality SNHRIs.

V. Conclusion

Whenever a new concept emerges, defining and typologizing the concept are important steps towards understanding and researching it. This article has contributed to that objective by defining and classifying SNHRIs. It is worth noting that the choices made in conceptualizing and typologizing SNHRIs (or indeed any concept) have real consequences (Coppedge 2012, 33). They influence research agendas, datasets, and comparisons, and impact the generalizability of case studies. To the extent that these choices are accepted in the broader community, they also influence how institutions are thought about and think about themselves (Eppler and Mengis 2011, 7). For example, once human rights actors started to think of national ombudsmen and human rights commissions as ‘NHRIs’, one saw a gradual isomorphism (or trend toward similarity), as pressure mounted to adapt to the NHRI ideal espoused in the Paris Principles (Cardenas 2014, 352). Similar processes could occur if institutions view themselves as SNHRIs rather than municipal human rights commissions or other traditional types.

Developing a new concept also inevitably has an effect on our understanding of neighboring concepts (Gerring 2011, 128). In this case, a definition and typology of SNHRIs could have an effect on our understanding of NHRIs as well. To give one example, the Scottish Human Rights Commission is often referred to as an NHRI (and often refers to itself as such). It has also been fully accredited as a national institution by the GANHRI. If, however, the SNHRI definition proposed here is accepted, then the Scottish Human Rights Commission would clearly be considered an SNHRI. To the extent that SNHRIs are viewed as a non-overlapping counterpart set to NHRIs, this could lead other actors to rethink whether the Scottish Human Rights Commission should really be treated as an NHRI.

The fact that defining and typologizing SNHRIs leads to real-world effects does not, of course, mean that they are unwarranted tasks. On the contrary, they are necessary for the promotion of high quality research. The importance of definition and classification means that they should be undertaken explicitly and scientifically, with choices justified and reasoning made clear. That is what I have attempted to accomplish in this article.

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