

NATIONAL HUMAN RIGHTS INSTITUTION

PARLIAMENTARY OBSERVATORY OF THE UNIVERSAL PERIODIC REVIEW¹

RECOMMENDATIONS TO BRAZIL

	Recommendation	Assessment
23	Continue efforts to strengthen national human rights institutions (Nepal).	↑
24	Continue working to ensure that the National Human Rights Institution gains “A” status in compliance with the Paris Principles (Portugal).	↑
25	Bring its National Human Rights Council in line with the Paris Principles (Sierra Leone).	↑
26	Provide the National Human Rights Council with the necessary resource to enhance its independence to effectively carry out its functions (Uganda).	✘
27	Provide the National Human Rights Council with the necessary budgetary, administrative and political independence to fully implement its functions (Greece).	↓
28	Provide the National Human Rights Council with the budgetary, administrative and political independence, which is necessary to exercise its new mandate (Guatemala).	↓
31	Bring its national human rights institutions, especially the National Human Rights Council, fully in line with the Paris Principles (Poland).	↑

Caption: ↑ (In progress) ✘ (Not fulfilled) ↓ (In retrossesion)



NATIONAL HUMAN RIGHTS INSTITUTIONS

NHRIs are state bodies set up by a constitutional or legislative mandate to promote and protect **human rights**.²

¹ The Observatory is a government mechanism to monitor the effectiveness of the recommendations made to Brazil in order to improve our human rights situation. It is a partnership between the House of Representatives and the United Nations in Brazil (UN Brazil)

² As defined in <http://acnudh.org/load/2010/12/PORT-triptico-INDH-final.pdf>, accessed on 06/25/2021.

RELATED TO THE 16TH SUSTAINABLE DEVELOPMENT GOAL (SDG):³



Paris Principles

It is the main source of international standards in the creation and procedures of NHRIs

Defines the duties, responsibilities, composition, guarantees of independence, methods of operation of NHRIs

It is currently the responsibility of the **Global Alliance of National Human Rights Institutions** to review applications and promote the accreditation of NHRIs that comply with the Paris Principles

IN BRAZIL

National Human Rights Council (CNDH) and Paris Principles

It is the closest to a NHRI, due to its institutional characteristics

Decree No. 7.037/2009

Established the formal commitment of the Federal Executive by infra-legal rule, with the Legislative Branch, to provide CNDH with conditions to be accredited as a NHRI



THESE ALSO HAVE CHARACTERISTICS THAT RESEMBLE A NATIONAL HUMAN RIGHTS INSTITUTION:

Public Defender's Office

- Has compatible constitutional competence;
- Acts in defence of respect, protection and promotion of human rights.

Federal Public Prosecutor's Office for the Rights of Citizens (PFDC)

- Performs functions expected of an NHRI in the domestic sphere;
- Recognizes the institution's challenges for full compliance with the Paris Principles.



³ Adopted by the United Nations General Assembly on 20 December 1993 (Resolution No. 48/134).

NATIONAL HUMAN RIGHTS COUNCIL (CNDH)

Law No. 12.986/2014

Transforms the Council for the Defence of the Rights of the Human Person into the National Human Rights Council (CNDH).

Purpose: to promote defend human rights, through preventive, protective, restorative and sanctioning actions of conduct and situations of threat or violation of these rights. Competences detailed in art. 4 of the Law.

They seem to comply with the Paris Principles provisions satisfactorily.

1. "para-jurisdictional" competence

The institution may be authorised to receive and examine complaints and petitions concerning individual situations (optional and non-mandatory competence to comply with the principles).

Carry out investigation procedures of conduct and situations contrary to human rights and apply sanctions within its competence.

The prerogative to request assistance from the Federal Police or law enforcement when necessary within their scope of responsibilities, and may also request services from public agencies necessary for due diligence or carry out surveys, examinations or inspections and have access to public databases or databases related to services of public relevance.

Complaints received and considered by the CNDH Plenary:

• 2019 – 166

• 2020 (until November) – 147



Even in the case of optional principles, it appears that the CNDH reasonably covers the principles that are "para-jurisdictional".

2. Composition and guarantees of independence and pluralism

The Paris Principles require procedures providing all necessary guarantees to ensure pluralistic representation of civil society involved in the promotion and protection of human rights, in an advisory capacity:

- Non-governmental organizations;
- Philosophical or religious currents of thought;
- Universities and qualified experts;
- Parliament;
- Government departments.

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CNDH Composition (Law No. 12.986/2014):

- 11 representatives of civil society
- 11 representatives from public bodies

Government representatives, in the strict sense, are 3 in a universe of 22 representations

• Special Secretary for Human Rights (current Minister of the Ministry of Women, Family and Human Rights);

- Attorney-General of the Republic;
- 2 federal Congressperson;
- 2 senators;
- 1 of magistrate entity;

• 1 From The Minister of Foreign Affairs

• 1 from the Ministry of Justice

- 1 from the Federal Police;
- 1 from the Public Defender's Office.

⁴ The current composition of the Board can be found at <https://www.gov.br/mdh/pt-br/aceso-a-informacao/participacao-social/conselho-nacional-de-direitos-humanos-cndh/Binio20202022NovacomposiotomaposenoCNDH.pdf>, accessed on 12/16/2021.

The Law makes no mention of the merely advisory role of these representations

experts consider it as one of the main obstacles for the Council's recognition as a NHRI.

ON THE OTHER HAND

The participation of civil society in the Council, as advisers and not just stakeholders to be heard, is an undisputed aspect for full compliance with the Paris Principles. The configuration of the composition of the Council makes it, at the same time, multipersonal and independent of governmental or congressional consent for the investiture of members.



IN OTHER COUNTRIES:

Colômbia⁶

Argentina⁷

Bolivia⁸

adopt in their NHRIs the model of “defensorias del Pueblo”, in which the hierarchical chain of command is in the hands of a single person.



defenders must be endorsed by the Legislative Branch of these countries.

Mexico⁹

India¹⁰

the members of the Council are directly or indirectly endorsed by the Legislative Branch.



⁵ In this sense, see RAMOS, André de Carvalho. **Curso de direitos humanos**. São Paulo: Saraiva Jur, 2020. p.625. See also FONSECA, Mariana de Souza; AVELINO, Daniel Pitangueira de. Conselho Nacional de Direitos Humanos: Agenda Política e Atribuições Executadas. In: AVELINO, Daniel Pitangueira de; FONSECA, Igor Ferraz; POMPEU, João Cláudio Basso. **Conselhos Nacionais de Direitos Humanos – Uma Análise da Agenda Política**. Brasília: Instituto de Pesquisa Econômica Aplicada; 2016.

⁶ Available at <https://www.defensoria.gov.co/es/public/Defensor/432/PerfilLhtm>, accessed on 12/15/2021..

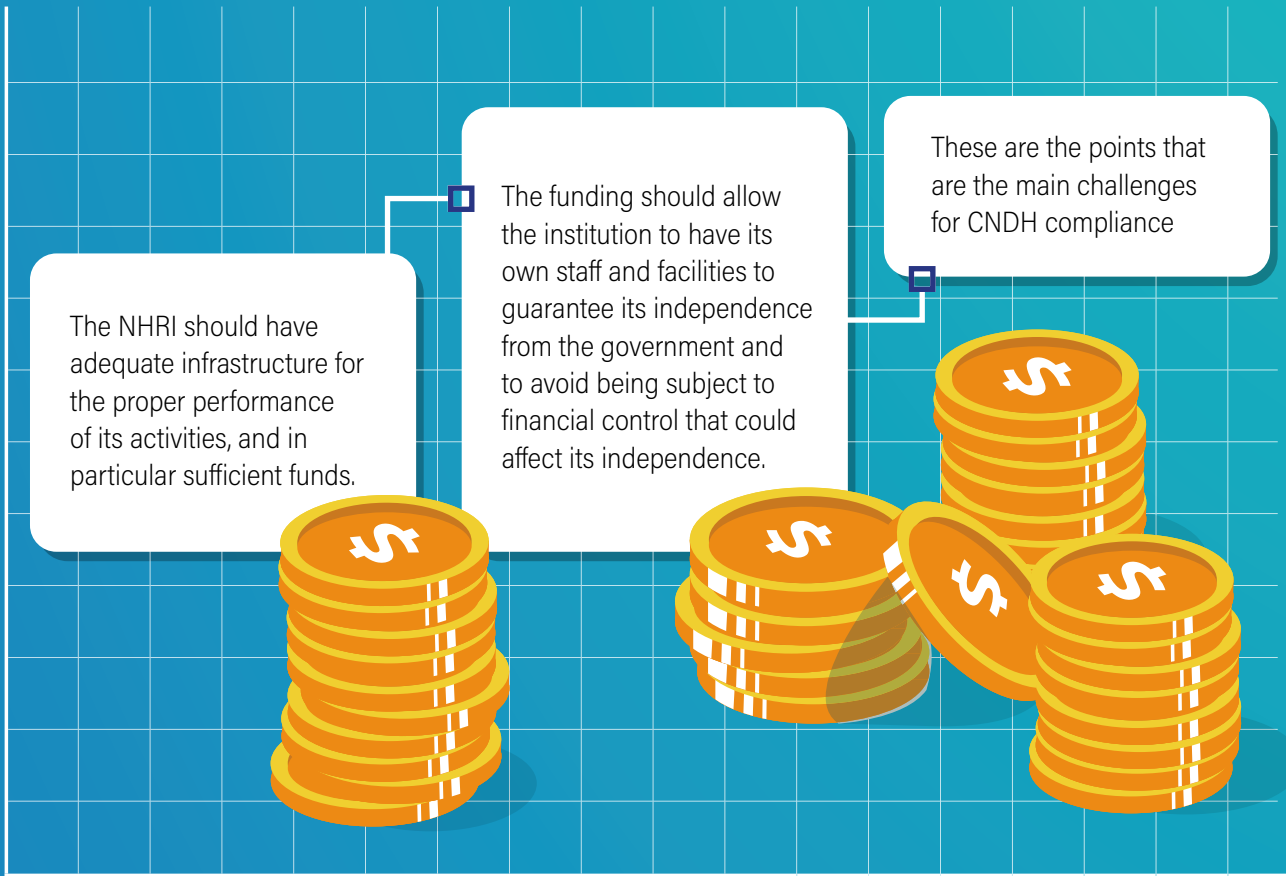
⁷ Available at <http://www.dpn.gob.ar/authorities.php>, accessed on 12/15/2021.

⁸ Available at <https://www.defensoria.gob.bo/contenido/autoridades>, accessed on 12/15/2021.

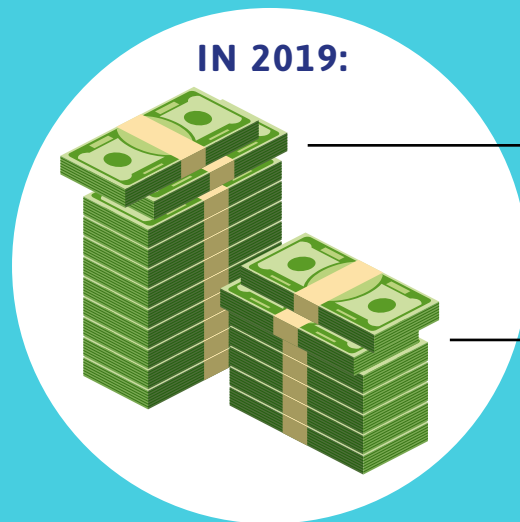
⁹ Available at <https://www.cndh.org.mx/documento/ley-de-la-comision-nacional-de-os-derechos-humanos>, accessed on 12/15/2021.

¹⁰ Available at <https://nhrc.nic.in/acts-&-rules/protection-human-rights-act-1993>, accessed on 12/15/2021.

3. Adequate infrastructure and administrative and budgetary autonomy



The minimum structure available today has only been possible because of parliamentary amendments to the budget.



R\$ 540 thousand
(own budgetary action)

+ R\$ 273 thousand
(parliamentary amendments)

PROBLEM: the ministry to which it is linked can decide on the availability of financial and administrative resources to the body.



ATTEMPTS TO ADAPT THE CNDH TO THE PARIS PRINCIPLES RESOLUTION 22/2020 AND ITS CONSEQUENCES





BUDGETARY AUTONOMY:

- Became a "management unit" – power to manage budgetary and financial resources, their own or decentralized;
- Is registered in the National Register of Legal Entities, although as a branch of the ministry of origin;
- Requires the presence of an expenses authorizer in its Executive Secretariat Staff.



ADMINISTRATIVE AUTONOMY:

- Claims that its Executive Secretariat's coordination is chosen by the plenary and that the Board of Directors participates together with the General Coordination in selecting employees;
- Requests that physical space management be carried out by the Council itself.



Administrative feasibility is
already guaranteed in Law
No. 12.986/2014



The Brazilian State has not endeavored to ensure adequate funding of the Council, as provided by law, nor has alternatively, justified that it does so to the fullest of its capacities and obligations of equity.



Demanded its own site and direct access to the Official Gazette, and even though large resource expenditures were not requested, still they have not received a response from the federal government.



The Ministry of Women, Family and Human Rights understands that it has the power to freely dispose of the Council's human resources and, especially, its general coordination.

LEARN MORE

[Full report – National Human Rights Institution](#)

[Public hearing on 08/13/2021](#)

[Report on the Hearing](#)

[Parliamentary Observatory of Universal Periodic Review](#)