

Human Rights Accountability in Latin America

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Abstract

For this study, the guiding research question is how National Human Rights Institutions (NHRIs) in Latin America hold their respective states accountable for compliance with human rights standards. This question is answered by examining what factors have led countries to create NHRIs, what effect do NHRIs have on human rights conditions, and what mechanisms are available for various NHRIs to hold the state to account. This research builds on work by Cardenas (2014) on the history and global diffusion of NHRIs; therefore, her work is a primary contributing source for answering the research question. Moreover, this paper examines the accountability mechanisms that NHRIs employ drawing on literature, including Mainwaring and Welna (2003) and Pegram and Goodman (2012). The methods used include analyzing an original dataset on human rights institutions in 23 Latin American countries to test how successful different Latin American countries have been over time. The dataset captures information on the presence or absence of NHRIs, the year it was created, how the NHRI was created (executive order, legislative actions, constitutional, other), and the catalyst for creation (such as international pressure or peace accords). It also integrates physical integrity index data from The CIRI Human Rights Dataset. Preliminary results show wide variations in the performance and mechanisms of NHRI's in different Latin American countries. This study expects to show that the state in Latin America can be held accountable for compliance with human rights standards when NHRIs are present and paired with non-traditional pressure such as media pressure.

Keywords: Latin America, Accountability, Human Rights

1 Introduction

This study's guiding research question is why different Latin American countries have been more successful than others at complying with human rights standards. Most Latin American countries have historically leveraged National Human Rights Institutions (NHRIs) to hold their respective country to account. Therefore, this research examines the theories and factors that have led countries to the creation of NHRIs, the effect NHRIs have on human rights conditions, and, finally, the conditions that are most conducive to having effective NHRIs. A variety of accountability mechanisms such as ombudsmen, defensorias, hybrid institutions, and advisory bodies are included by the use of "NHRI" as opposed to naming each individual body. Additionally, "non-formal pressure" is defined as a type of pressure not associated with a state's government, such as social initiatives and media attention. This research builds on Cardenas's (2014) work regarding the history and global diffusion of NHRIs across Latin America. Using Cardenas's position as the starting point, this paper examines her conclusions on how the idea of NHRIs have been able to spread throughout Latin America. However, historical evidence is used to understand the greater implications of the current state of NHRIs in Latin America as opposed to solely reviewing their histories.

The conclusions of this report are derived from two datasets and one case study. First, this paper utilizes an original dataset on human rights institutions in 23 Latin American countries. The dataset captures information on the presence

– or absence – of NHRIs, the year it was created, how the NHRI was instituted (executive order, legislative actions, constitutional, other), and the catalyst for creation (such as international pressure or peace accords). Additionally, this paper integrates the physical integrity index data from The CIRI Human Rights Dataset¹. This paper takes a primary, descriptive measure of the general trends Latin American countries have experienced over the past decade by analyzing these two datasets. Specifically, the trends are used to understand the broad impact that NHRIs have on human rights conditions.

Additionally, this study reviews the Matanza Riachuelo initiative of 1995. This case study is an exceptional illustration of how effective NHRIs are when they work with non-formal powers. In this case, these two powers have created substantial change within their society. By analyzing these resources, as well as other literature on the topic, this paper sought to uncover why Latin American countries have been more successful than others at complying with human rights standards. The conclusion reveals that Latin American countries are most effectively held accountable for compliance with human rights standards when NHRIs are present and paired with non-formal networks of power, specifically media pressure.

2. Theory

The question of how to define accountability and how it practically affects the state is a fascinating one, and various authors have attempted to expound on this concept. Scott Mainwaring and Christopher Welna (2003) gives a concise definition of accountability and describes how intrastate accountability functions as a mechanism to keep varying parties in check. Mainwaring and Welna define political accountability as “a formalized relationship of oversight and/or sanctions of public officials by other actors.”² Based on the previously mentioned definition, two types of accountability become apparent. The first type is when elected officials are accountable to voters because voters give elected officials power.³ The second type of intrastate accountability is when the state formally charges state-sponsored agencies with overseeing and sanctioning public officials and bureaucracies.⁴

According to Mainwaring and Welna (2003), intrastate accountability explains how the entity being held accountable shifts within a state. While Mainwaring and Welna (2003) explain that “outside” actors play an undeniably important role in regulating how public officials use and delegate their power, he does not explicitly outline a role for said “outside actors” to play. Although Mainwaring and Welna (2003) only briefly discuss a role for non-formal actors, Pegram and Goodman (2012) expand on political accountability theory and discuss the transformative potential of NHRIs regarding their relationships with other institutions regarding the influence of social factors.

Pegram (2012) analyzes the relationship between both official and non-formal networks of power. Regarding the non-formal networks, Pegram focuses on social relations. In this context, social relations refer to “interaction with organized actors exercising accountability over elected officials from outside the state, notably human rights non-governmental organizations (NGOs), media, and civic organizations.”⁵ Pegram concludes that, although the formal design is certainly crucial in the formation and maintenance of NHRIs, he states that “the norms, rules, and practices of non-state actors define its success in holding prevailing actors to account.”⁶ The ideas behind accountability and social relations set the stage for how NHRIs have gained momentum throughout Latin America.

3. Background

Cardenas (2014) describes the proliferation of NHRIs from the 1990s to 2012. Throughout her work, Cardenas uses historical context to give a full background of NHRIs. The framework that she provides explicitly refers to the NHRI’s role within the state, as well as how NHRIs have diffused across Latin America over time. Cardenas uses the term “Janus-faced” to describe the state’s abilities to be both a “violator and regulator of rights.”⁷ The paradoxical role that the state plays makes it necessary for outside parties to scrutinize its performance. The state’s ability to maintain the legal use of violence over its people, but at the same time, guarantee the people’s rights engenders a thin line between liberty and oppression.

Furthermore, according to Cardenas, this “Janus-faced” role necessitates an observation from third parties such as other governments, or researchers, to ensure the proper treatment and regulation of the people’s liberties. As countries take on this role, it is evident that they would not have a reason to limit their power without pressure, domestic or international. In turn, the role of NHRIs as accountability mechanisms then becomes necessary to ensure the just and fair treatment of citizens. One crucial distinction that Cardenas makes in her work is the distinction between NHRIs and other governmental bodies that address human rights.

She explains that the title, *National Human Rights Institution*, is simply a “formal designation” that refers to a state institution tasked with ensuring the rights of a specific state’s people according to a set of international guidelines.”⁸ This distinction guides various audiences to disregard the notion that NHRIs are merely administrative bodies put in place to appease international powers and domestic tensions. Instead, audiences should acknowledge and recognize NHRIs for their role as mediators between political leaders and the population.

From a theoretical perspective, the most critical piece of Cardenas’s work is her discussion on the diffusion of NHRIs across Latin America. Cardenas defines diffusion as “an idea’s proliferation across different contexts.”⁹ This definition is vital to understand the significance of NHRIs and what is represented by their diffusion throughout Latin America. By stating that diffusion is the proliferation of an idea, rather than the proliferation of an administrative body, she subtly highlights the impact of NHRIs on various regions. Although NHRIs are administrative bodies, they have become more than that to the people they seek to defend. NHRIs represent the idea that the state should guarantee fundamental human rights to every citizen. Therefore, it has been the proliferation of this *idea* that has been the most conducive attribute to the spread of NHRIs across Latin America.

NHRIs serve as the link that maintains peace from capitol buildings to the streets; however, this link is a vector more so than an arrow. Cardenas’s work acknowledges the dichotomy that is inherent in the role that NHRIs have been given. Firstly, society members have a systemic means to voice their complaints directly to the source of their grievances, i.e., the state. Secondly, this link allows leaders to attempt to control parts of the country and redirect social grievances through the NHRI.¹⁰ In theory, this two-way relationship should prevent a breakdown in communication that has led to egregious human rights violations. Nevertheless, in practice, these institutions have had mixed results.

4. Data Collection

This research analyzed an original dataset on human rights institutions in 23 Latin American and Caribbean countries with a population greater than 500,000. The dataset captures information including the institution's name, the year it was created, how it was created (executive order, legislative actions, constitutional, other), and finally, the catalyst for creation (such as international pressure or peace accords). Of the 23 countries in our dataset, 17 have an NHRI, and, as of 2019, six did not have any institutionalized approach to handle human rights violations. The oldest NHRI is Guatemala’s Procuraduría de Los Derechos Humanos de la República de Guatemala, created in 1985. The most recently created is Chile’s Instituto Nacional de Derechos Humanos, created in 2012. Nevertheless, a majority of the current NHRIs were established in the 1990s. This research incorporates data on human rights conditions from the CIRI Human Rights Dataset (2011), specifically the physical integrity index. The CIRI Data Set defines physical integrity as “an additive index constructed from the Torture, Extrajudicial Killing, Political Imprisonment, and Disappearance indicator ranging from 0 (no government respect for these four rights) to 8 (full government respect for these four rights).”¹¹ This research incorporates physical integrity as the primary metric for the success or failure of an NHRI because it includes several facets of human rights violations.

The following analysis aims to examine the trends within the Latin American country’s physical integrity scores before and after establishing NHRIs. Each Latin American country's physical integrity score was logged for one, two, and three years before their creation. Additionally, this analysis looks at one, five, and ten years after the formation of the NHRI. Figure 1 and Figure 2 captures the general trends of change over time. The CIRI data are only available from 1981 to 2011; consequently, only 15 countries in the list had physical integrity scores available for three years before and ten years after creating an NHRI.

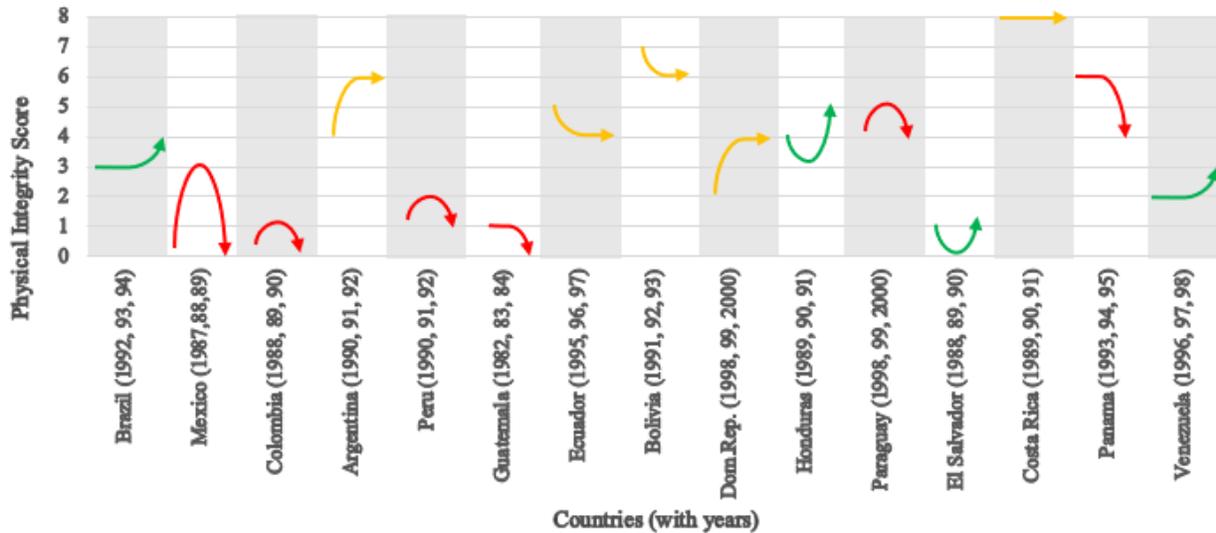


Figure 1. Trends in Physical Integrity score before the creation of an NHRI.

Figure 1 shows scores by country before the creation of NHRIs. Countries that experienced an upward trend of physical integrity are denoted by green arrows facing upward; however, if a country's physical integrity score decreased in the years leading up to the creation of their NHRI, its respective arrow is red and points downward. If a country's physical integrity score remains the same for at least two years, its respective arrow plateaus and is colored yellow. Regarding human rights conditions before the creation of an NHRI, there is no definite trend. Of all the countries accounted for, only four countries experienced an upward trend before establishing their NHRI. Furthermore, there is a wide variance in physical integrity levels three years before NHRI creation. For example, three years before creating an NHRI, Mexico scored a one on the physical integrity scale, then, a year after, improved to a score of three, until it fell back to the score of one a year before establishing an NHRI. Other countries, such as Paraguay and Peru, followed similar trends. Conversely, six of the 15 countries experienced downward trends up until one year before creating their NHRI.

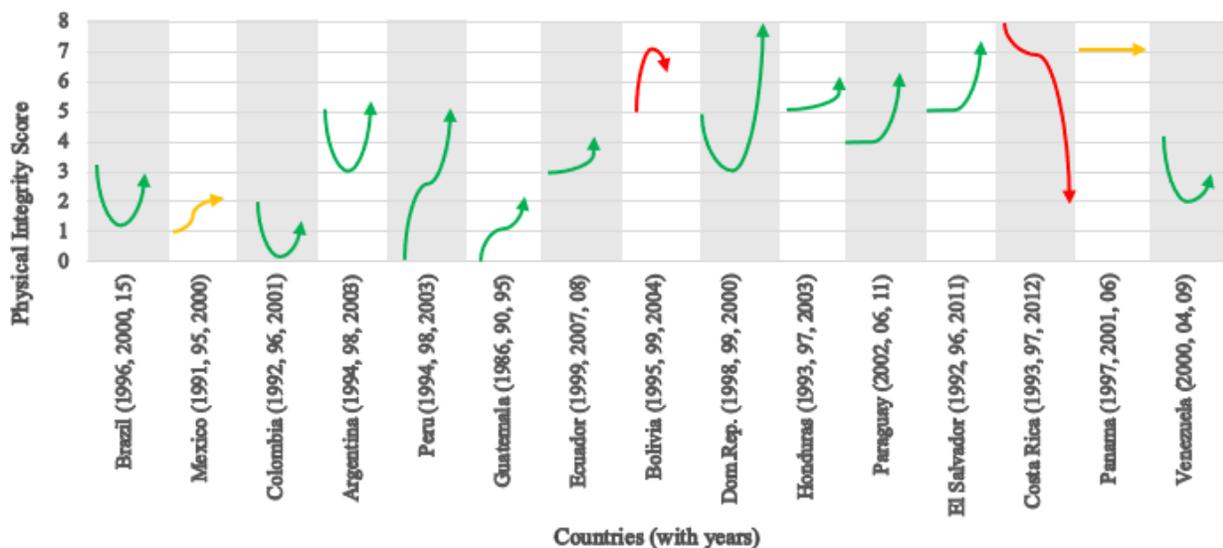


Figure 2. Trends in Physical Integrity score after the creation of an NHRI.

Figure 2 displays that, of the countries accounted for, the years following the establishment of an NHRI experienced a general increase in physical integrity scores. As previously stated, Figure 2 accounts for a more extended period.

While the countries included in Figure 2 generally share an upward trend, this data alone cannot conclusively determine a cause without further research; nevertheless, one explanation for these trends comes from this report's central hypothesis. NHRIs are most effective when they join forces with media to generate collective pressure against the state.

In Chapter 10 of *Human Rights, State Compliance, and Social Change*, Enrique Peruzzotti (2012) discusses a historical instance where civil actors have interacted with NHRIs to create significant social change through political processes. Peruzzotti explains that ships containing plutonium were docking in the Matanza Riachuelo Basin, turning it into one of the world's most ecologically damaged places.¹² Due to the seemingly irreparable damage, Buenos Aires' residents felt the full effects of the government's lethargy on the issue. In 2013, the Blacksmith Institute and Green Cross Switzerland issued a report that ranked the Matanza Riachuelo Basin as one of the world's top ten most polluted places.¹³ For context, in 2013, another member of the Blacksmith Institute's list is Chernobyl, Ukraine, where one of history's most notorious nuclear disasters occurred in 1986.¹⁴ This list signifies that the Argentinian government's neglectfulness persisted until its city became one of the world's most polluted areas.

While the initial push for change may have begun in 1995, aggressive advances in handling these abhorrent conditions were not acted upon by Argentina's Defensoria de Pueblo (DdP) until 2002. In *El Rol de la Defensoría del Pueblo en Los Conflictos Ambientales*, Spadoni (2013) describes how the Neighbors Association of La Boca appealed to the DdP to advocate for action taken against the living conditions of the Matanza Riachuelo Basin. Considering that the Matanza Riachuelo Basin environment was comparable to a nuclear fallout site, this cry for help seems inevitable. Eventually, more citizens began to unite and reach out to the DdP for help. The DdP then responded by initiating action No. 9924/02, which sought to explore and defend the environmental rights of the population affected by the conditions of the Matanza Riachuelo Basin.¹⁵ Spadoni explains how the NHRI sought out notable non-governmental organizations (NGOs) to produce the first special report on the situation in the Matanza Riachuelo Basin.¹⁶ In other words, it was the NHRI who delegated power to non-formal powers, i.e., media campaigns and NGOs, so that substantial change could be achieved.

The DdP and NGOs' combined efforts eventually led to the Auditoria General de La Nacion: Republica Argentina (AGN) auditing the maintenance of the basin. During this audit, the AGN found that, in general, the average household without sewage service is higher in the parts of the basin (65.9%) than in all the parts of the province of Buenos Aires (56.8%).¹⁷ Sewage services represent an indication of the population's sanitary conditions, so, without a proper drainage network, the basin essentially turned into the area's septic tank.¹⁸ What began as an effort to mitigate ships containing plutonium docking in the basin turned into the uncovering of years of government negligence. Nevertheless, tireless campaigning and unified efforts created institutional impacts, namely the creation of a public body Autoridad de Cuenca Matanza Riachuelo (ACUMAR), which is now responsible for the elaboration and coordination of the cleanup plan.¹⁹

In fact, in *Contaminación en la Cuenca Matanza Riachuelo*, a synopsis of the events that occurred throughout the Matanza Riachuelo Initiative, the Nizkor Team (2015) dedicated the success of the movement to both the civil society organizations and the DdP. The Nizkor Team stated that NGOs and the DdP took responsibility for protecting the Matanza Riachuelo Basin citizens and led the lawsuit against their government.²⁰ In this case, non-formal sources of power supported the country's NHRIs, which played a significant role in compelling countries to remain accountable to their people's demands and protection. As seen with the Matanza Riachuelo initiative, horizontal accountability mechanisms (the Defensor del Pueblo) alone could not force its government to be accountable. It was when the DdP recruited the support of NGOs and media outlets that produced results.

5. Discussion

The research's guiding hypothesis is that NHRIs effectively produce long-term change when present and paired with non-formal networks of power, such as media pressure. The data that was initially utilized showed that, in general, there are upward trends associated with the implementation of NHRIs. Still, there are two fascinating aspects of the trend lines in Figures 1 and 2. First, several cases, such as Argentina, Brazil, Colombia, Dominican Republic, and Venezuela, initially experienced a downward trend followed by an increase that surpassed the score given one year after implementing an NHRI. Moreover, each NHRI was implemented in a different year, so the factor affecting each country seems to be directly linked to each respective country's NHRI. Due to this trend's frequency and consistency, it stands to reason that a factor inherent in Latin American democracies is affecting each respective country's ability to hold their democratic institutions to account. These factors could range from a type of acclimation period to accountability mechanisms to direct resistance to such mechanisms. In either scenario, future research would benefit

from taking these trends into account. Secondly, two countries, Bolivia and Costa Rica, experienced sharp declines in their physical integrity scores despite implementing NHRIs. Although these trends are not reflective of the region, their downward trends indicate that the implementation of an NHRI does not guarantee the preservation of human rights. The reason for these countries' decline in physical integrity scores seems to be inherent in how their NHRIs were employed. Thus, research that follows would benefit from examining these countries as individual case studies instead of a comparative study such as this report. Nevertheless, it is problematic only to show trends because, by themselves, they do not reveal the direct impact that NHRIs have when paired with non-formal pressure. Therefore, the utilization of the Matanza Riachuelo case study was necessary to support the hypothesis.

Through examining the case of the Matanza Riachuelo initiative, the strength of non-traditional pressure is evident. For example, when public officials face pressure from traditional sources of power (DdP) in conjunction with non-formal sources (media), a systematic change occurred. At the outset of this initiative, there were only small, localized campaigns against ships containing plutonium docking in a river basin. This initiative showed the power of organizing and mobilizing resources to help position neglected issues at the forefront of the public's agenda. The purpose of highlighting this specific example was to show that rigorous action of non-formal powers paired with NHRIs has successfully raised the state's awareness of previously overlooked issues. The results achieved by the DdP and Argentina's media show that combined pressure stimulates public officials to make systemic changes. While the Riachuelo Matanza initiative is an instance of what was hypothesized, it is only one case that supports the hypothesis. Therefore, there is a need for further investigation examining the effectiveness of NHRIs working in conjunction with non-formal sources of power.

The most critical element of this paper is that it demonstrates that more research on this topic is required to understand the rise and reach that each Latin American NHRI has. While it is true that both formal and non-formal pressures have forced governments to take action to protect human rights, there are still multiple cases where states have regressed, as seen by the trends in Figure 2. Here, Costa Rica is an especially notable outlier, as, at one point, it had a physical integrity score of eight, but, ten years later, fell to a score of two. Further research should include supplemental case studies where human rights have improved as a direct result of NHRIs, as well as an analysis of the entire time period to see what was occurring in every country over time. Specifically, whether declines in physical integrity tended to precede the creation of NHRIs and, also, were countries with declines, or periods of decline, more likely to yield NHRIs.

6. Conclusion

At the outset of this research, it was hypothesized that Latin American countries are most effectively held accountable for compliance with human rights standards when NHRIs are present and paired with non-formal pressure, i.e., media pressure. A theoretical framework was established by clarifying topics such as political accountability, intrastate accountability, and both formal and non-formal networks of power. The theoretical foundation of accountability and social relations established the context for how NHRIs have diffused throughout Latin America. Cardenas's (2014) work was used to understand how NHRIs diffused so rapidly throughout Latin America.

The conclusions from this study were derivative of two datasets and one case study. The data sets were combined into two figures so that the general trends could be visualized. In Figure 1, *Trends Before NHRI*, countries had considerably sporadic results; however, in Figure 2, *Trends After NHRIs*, there was a noticeable increase in upward trends. Nevertheless, the data alone did not reveal why this trend was occurring. Therefore, the Riachuelo Matanza Basin case further exemplified the effectiveness of NHRIs working in conjunction with non-formal networks of power. While there may be a lack of overwhelming evidence for the power of NHRIs working with non-formal networks of power, it certainly leads one to believe that there is room for an in-depth analysis of other instances where similar cases are occurring. The significance of understanding the power behind pairing NHRIs and non-formal sources of power may assist NHRIs who are currently unable to generate systemic change.

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8. References

“Auditoría General De La Nación.” Auditoria General de la Nacion. Republica Argentina. Accessed May 24, 2020. <http://documents.banquemondiale.org/curated/fr/237751468199768944/pdf/484430PAD0P105101Official0Use0Onl y1.pdf>.

Cardenas, Sonia. *Chains of Justice: The Global Rise of State Institutions for Human Rights*. Philadelphia: University of Pennsylvania Press, 2014.

Cingranelli, David L, David L Richards, and K. Chad Clay. “CIRI Human Rights Data Project.” CIRI Human Rights Data Project, January 1, 1970. <http://www.humanrightsdata.com/>.

“Contaminación En La Cuenca Matanza Riachuelo.” Equipo Nizkor - Una década al cuidado de los fondos públicos - Contaminación en la cuenca Matanza Riachuelo., November 27, 2015. <http://www.derechos.org/nizkor/arg/doc/matariach.html#6>.

Mainwaring, Scott, & Welna, Christopher (Eds.). *Democratic Accountability in Latin America*. Oxford: Oxford Univ. Press, 2003.

Pegram, Thomas, and Ryan Goodman. *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*. Cambridge: Cambridge Univ. Press, 2012.

Peruzzotti, E. The Socialization of Horizontal Accountability: Rights Advocacy and the Defensor del Pueblo de la Nación in Argentina. In *Human Rights, State Compliance, and Social Change* (New York, NY: Cambridge University Press), 243-269

Spadoni, Eliana. “El Rol De La Defensoría Del Pueblo En Los Conflictos Ambientales: El Caso De La Cuenca Matanza Riachuelo.” *Ambiente & Sociéda* 16, no. 2 (2013): 47–62. <https://doi.org/10.1590/s1414-753x2013000200004>.

“Top Ten Polluting Industries 2013.” WorstPolluted.org. Accessed May 24, 2020. <http://www.worstpolluted.org/2013-report.html>.

9. Endnotes

1 Cingranelli, David L, David L Richards, and K. Chad Clay. “CIRI Human Rights Data Project.” CIRI Human Rights Data Project, January 1, 1970. <http://www.humanrightsdata.com/>.

2 Mainwaring, Scott, & Welna, Christopher (Eds.). *Democratic Accountability in Latin America*. (Oxford: Oxford Univ. Press, 2003,) 7.

3 Mainwaring, Scott, & Welna, Christopher (Eds.). *Democratic Accountability in Latin America*. (Oxford: Oxford Univ. Press, 2003)

4 Mainwaring, Scott, & Welna, Christopher (Eds.). *Democratic Accountability in Latin America*. (Oxford: Oxford Univ. Press, 2003)

5 Pegram, Thomas, and Ryan Goodman. *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*. (Cambridge: Cambridge Univ. Press, 2012,) 225.

6 Pegram, Thomas, and Ryan Goodman. *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*. (Cambridge: Cambridge Univ. Press, 2012,) 23.

7 Cardenas, Sonia. *Chains of Justice: The Global Rise of State Institutions for Human Rights*. Philadelphia: University of Pennsylvania Press, 2014,) 17

8 Ibid., 16.

9 Ibid., 17.

10 Ibid., 16.

11 Cingranelli, David L, David L Richards, and K. Chad Clay. “CIRI Human Rights Data Project.” CIRI Human Rights Data Project, January 1, 1970. <http://www.humanrightsdata.com/>.

12 Peruzzotti, E. The Socialization of Horizontal Accountability: Rights Advocacy and the Defensor del Pueblo de la Nación in Argentina. In *Human Rights, State Compliance, and Social Change* (New York, NY: Cambridge University Press,) 245.

13 “Top Ten Polluting Industries 2013.” WorstPolluted.org. Accessed May 24, 2020.
<http://www.worstpolluted.org/2013-report.html>.

14 Ibid.

15 “Auditoría General De La Nación.” Auditoria General de la Nacion. Republica Argentina. Accessed May 24, 2020.
<http://documents.banquemondiale.org/curated/fr/237751468199768944/pdf/484430PAD0P105101Official0Use0Only1.pdf>.

16 Spadoni, Eliana. “El Rol De La Defensoría Del Pueblo En Los Conflictos Ambientales: El Caso De La Cuenca Matanza Riachuelo.” *Ambiente & Sociedad* 16, no. 2 (2013): 47–62. <https://doi.org/10.1590/s1414-753x2013000200004>.

17 “Auditoría General De La Nación.” Auditoria General de la Nacion. Republica Argentina. Accessed May 24, 2020.
<http://documents.banquemondiale.org/curated/fr/237751468199768944/pdf/484430PAD0P105101Official0Use0Only1.pdf>.

18 “Contaminación En La Cuenca Matanza Riachuelo.” Equipo Nizkor - Una década al cuidado de los fondos públicos - Contaminación en la cuenca Matanza Riachuelo., November 27, 2015.
<http://www.derechos.org/nizkor/arg/doc/matariach.html#6,3>

19 Peruzzotti, E. The Socialization of Horizontal Accountability: Rights Advocacy and the Defensor del Pueblo de la Nación in Argentina. In *Human Rights, State Compliance, and Social Change* (New York, NY: Cambridge University Press,) 245.

20 “Contaminación En La Cuenca Matanza Riachuelo.” Equipo Nizkor - Una década al cuidado de los fondos públicos - Contaminación en la cuenca Matanza Riachuelo., November 27, 2015.
<http://www.derechos.org/nizkor/arg/doc/matariach.html#6,1>