

# Ombudsmen Need Independence to Speak Out for Human Rights

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## **Workshop 1: The Ombudsman as Human Rights Defender Wednesday, June 10, 2009**

*Independent, accessible and effective – these should be the defining attributes of the ombudsman in defending and promoting human rights. Ombudsmen in several countries have already made a great difference, but only where their integrity has been respected by those in power. Ombudsmen must be free to look into any issue falling within their competence without prior approval from the authorities, and they should be able to reach out to society at large. It is the ombudsman’s mandate to be both critical and impartial that makes the institution so precious also as a human rights defender.*

The role of ombudsmen has changed in recent years – more and more they have become defenders of human rights. Ombudsmen do not simply act as guardians of good administration; they have become active in protecting and promoting human rights. Some of the new ombudsman institutions are in fact called “Human Rights Defenders.”

The increased interest of international human rights organizations in the ombudsman institution has contributed to this development. The “Paris Principles” on national institutions tasked to promote human rights were endorsed by the UN General Assembly already in 1993. These principles apply to the different human rights structures that may coexist in various countries: Ombudsmen, human rights commissions or institutions, equality bodies and other more specialized structures.

It is naturally not enough that governments simply sign on to European and international human rights norms. These standards must also be translated into a practical reality at all levels – national, regional and local. Ombudsmen are important extra-judicial mechanisms for the independent monitoring of human rights.

Though the precise mandates of ombudsmen do differ, many of them have now assumed a formal mandate as national monitoring bodies under international treaty obligations; for example, in visiting places of detention under the Optional Protocol to the UN Convention Against Torture.

Ombudsmen in several countries have already made a great difference – but only where their integrity has been respected by those in power. Independence is indeed the defining aspect of the institution. It is a central factor for the legitimacy of the ombudsman as a human rights defender. The ombudsman should stand above party politics and not take instructions from anyone. The person holding the office should be considered as a fully impartial figure, and should uphold this principle in every facet of his or her work.

Independence is an essential requirement in the “Paris Principles” as well: Independence must be guaranteed by law and it must govern the method by which office holders are appointed. Constitutional provisions are the preferred option. In most cases, ombudsmen are either elected by the Parliament or appointed by the government or the head of state. If governments fail to respect the integrity of ombudsmen, the institutions will not be able to function properly.

Importantly, the office of the ombudsman has to be adequately funded to allow it “to be independent of the government and not subject to financial control which might affect its independence” (quoting the Paris Principles). Separate budgetary lines which guarantee the sustainability of available resources in the long run are needed in this respect. Resources must be made available to ensure that all complaints are handled free of charge, in a speedy and efficient manner, with only a minimum degree of mandatory formality.

Ombudsmen must also be free to look into any issue falling within their competence without prior approval from the authorities. It is essential for them to be able to collect all and any kind of evidence that is relevant for their work.

Easy access to the institution is crucial for the realization of rights. Ombudsmen should be able to reach out to society at large; they should be well known and easy to approach. Particular attention must be given to making the institution well-known among marginalized or vulnerable groups of people. Roma, people with disabilities, children and migrants, for example, should be aware of their rights and the possibility to complain to the ombudsman. As a low-threshold complaints body, the ombudsman complements the court system, which may require far more effort to use.

Accessibility may require funds for the establishment of additional offices outside metropolitan areas. Apart from national offices, there are also regional ombudsmen in some larger countries, such as Russia, Spain and Italy. Certain countries have also set up specialized institutions – for instance, most European countries have created an ombudsman for children.

Yet the ombudsman is not simply a complaint mechanism. Increasingly, ombudsmen raise awareness about human rights and are regularly consulted on human rights questions in their countries. According to the Paris Principles, national structures should be mandated to submit reports, opinions and recommendations on any human rights matter to the government or the authorities, or to decide to publish such information.

When given proper mandates and adequate funding to ensure their independence, ombudsmen have proven competent to monitor continuously how national policies and administrative practices comply with international standards. Often specialized ombudspersons have a particularly pronounced role in providing expertise and advice on specific human rights questions.

Moreover, ombudsmen can play an important role in promoting the systematization of human rights work. National human rights planning requires close cooperation among authorities. Monitoring activities by ombudsmen provide valuable data on the human rights situation in a given country and on any progress made. Their impartiality is an asset in such work. The develop-

ment of indicators and benchmarks for human rights work can greatly benefit from the experience of ombudsmen.

The promotion and protection of human rights also requires international cooperation and visibility. The results of human rights monitoring at the national level should be made available at the international level. Ombudsmen often cooperate with international human rights mechanisms by providing them with information and by facilitating their country visits. Such transparency may not always be welcomed by national governments, a fact that accentuates the requirement of effective independence for ombudsmen. It is also necessary that ombudspersons receive the support they clearly deserve from international human rights organizations.

It is important to underline that ombudspersons are not non-governmental civil society organizations, even when they are considered human rights defenders. Their constitutional or statutory authority places them in a unique position for promoting human rights. Ombudsmen are part of the “checks and balances” of a democratic society based on the rule of law. They have been officially mandated to speak out for human rights and to defend those whose human rights have been violated. Such a mandate must be exercised in a principled and impartial manner with reference to existing human rights standards. Ombudsmen also have a duty to contribute to the creation of an environment conducive for other human rights defenders, including individuals and non-governmental organisations working in the field of human rights.

Independent, accessible and effective – these should be the defining attributes of the ombudsman in defending and promoting human rights. Ombudsmen are key partners for the practical implementation of human rights standards and highlight the need for a self-critical attitude in the process. It is this official mandate to be both critical and impartial that makes the ombudsman so precious also as a human rights defender.