



The Role of the Ombudsman in Ending Impunity for Gender-based Violence

Let me first express my appreciation to Dame Beverley Wakem, Chief Ombudsman for New Zealand for her invitation to UN Women to participate in this 10th World Conference of the International Ombudsman Institute.

This opportunity comes at an appropriate time as we are about to start the annual global campaign: 16 Days of Activism to End Violence against Women, the 2012 theme being: **From Peace in the Home to Peace in the World.**

And as this theme notes, there can be no sustainable peace where women are vulnerable (as we have seen throughout history and across cultures) to violations and to limitations of choice and autonomy, whether in the home, in the community or at the instance of those who wield the powers of the state.

This message, the unattainability of societal peace in the presence of gender-based violence, we have to acknowledge with profound dismay has not been acted on with sufficient resolve in many parts of the world. I say sufficient, because it is the case that we know more, talk more and have acted more to reduce or end violence against women in the last twenty years than at any other time in history.

Over the last twenty years, we have seen three distinct phases of action in responding to violence against women.

In the first phase, the widespread nature of women's violations entered the public consciousness. Women came forward to identify themselves as survivors of violence in the home and in the community. This was a period in which the rape crisis centres and the first shelters developed - a period marked by focus on the needs of victims for services, for safety and for space for healing. It was also a period marked by action, not of the state, but of women's organisations resolved to support women in crisis. A legacy of this period is that most shelters are still operated by women's organisations with only inadequate support by the state in many countries.

By the early 1990's (the second phase), women's rights theorists pointed to the causal relationship between unequal gender relations and violence against women. Not only were the theorists able to speak to the forms of violence but increasingly they were able to enumerate the prevalence and incidence of these violations. For example, we know now that many countries where studies have been conducted, at least one in three women have reported experiencing physical abuse in the home. (Antigua and Barbuda (30%), New Zealand (30%) , Timor Leste (34%), Costa Rica

(33%) , Czech Republic (35%), Turkey (39%) , Bangladesh (49%), Cameroon (39%), Kenya (37%) for example)¹

In the second phase, advocates brought these acts of violence out of the private sphere where they were treated as personal tragedies and into the public sphere, where they became the basis for demands for accountability grounded in the state's obligation to eliminate all forms of discrimination against women. Violence against women may be catalysed by several factors (substance abuse, poverty-related stresses etc.) but essentially it is rooted in unequal power relations between men and women. It is this connection between systemic unequal power relations and the violative actions of non-state actors that grounds the assertion for state accountability to prevent and protect against gender-based violence.

As a result, women's advocacy reshaped national and international legal frameworks. Elaborating on the obligation of the state to ensure formal and substantive equality contained in the Convention on the Elimination of all Forms of Discrimination against Women, in 1993 the Declaration on the Elimination of Violence against Women was adopted by the UN General assembly in 1993.

There are now norms and standards that hold governments accountable for violence- in private and in public- and require them to take concrete steps to protect, respect and fulfil women's rights to lives free of violence. During this second period, regional human rights standards were also developed, such as the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para). A similar declaration came into being in 2004 in the ASEAN Region. And in 2011, the Council of Europe adopted a Convention on preventing and combating violence against women and domestic violence.

In short, women have transformed an issue once shrouded in silence into a basic human rights claim. Violence against women has a public importance and a political significance – the personal is indeed political.

At national level, significant progress was also made in the elaboration of laws to address some forms of violence, in particular, domestic violence. However, less progress has been made on sexual harassment or on removing the hurdles to reporting and prosecution of sexual assault. Women victims can be re-victimised through ineffective policing and prosecuting of rape cases. Evidential rules can allow a redirection of attention from the perpetrator to the victim, through blame-focussed inquiry into the complainant's sexual history and the timing of reporting. And across all cultures the negative stereotyping of the vindictive, untrustworthy woman acts as an emotional fetter on victims, reluctant to run the justice gauntlet in which they feel like the accused.

¹ UN Women: 2011-2012 Progress of the World's Women. In Pursuit of Justice

For these reasons, attrition of cases is evident globally in regard to sexual assault cases and results in widespread impunity for gender-based violence.²

And so efforts at strengthening accountability have focused on law reform, developing the capacities of the administration of justice for implementing laws, building monitoring systems and promoting civil society demands for state accountability.

While much of the work had been to reform the substance of the law, to change its content, it is clear that the structure and culture (how people viewed the law) of the administration of justice require attention. Many women cannot access justice because of economic deprivations. In addition, lack of knowledge of the content of the law and of rights impedes access to justice. And in relation to the culture of the law, where those charged with implementing law (judges and police) hold stereotypically negative images of women or accept the naturalness of patriarchy, women's access to gender justice is curtailed. Study after study has shown that it is police inaction, unresponsiveness and/or inefficiency that is largely explanatory of the under-reporting, under-investigation, under-charging, under-prosecution of sexual and domestic violence offences and therefore attrition and impunity.

The Role of the Ombudsman

While the Ombudsman is neither a tool of legal accountability nor of political accountability, it is a mechanism for accountability which allows both the redressing of individual experiences of injustice as well as addressing systemic systems and structures to ensure a more effective and equitable access to state actions and resources.

The manner in which the Ombudsman is expected to function presents opportunities for the advancement of both awareness and implementation of women's human rights. Ombudsman offices do not only respond to individual complaints but have the power to undertake investigations on their own motion. The Ombudsman can pursue matters where it appears that there are underlying patterns and common causes for maladministration. In this way, such a broad and systemic approach can serve as a resource for governmental institutions in identifying and preventing recurring unfairness, inaction and limited state responsiveness to the legitimate expectations of citizens.

There is a growing consensus that the Ombudsman as an institution can strengthen the rights-based framework within which public policies are developed and implemented and more particularly can support the administration of justice, and in particular the police to strengthen adherence to the rule of law and ensure access to justice for victims of gender-based violence.

² Reflecting on this global phenomenon of impunity, progress of the World's Women 2011 cites a study by the Population Council on police attitudes in two South Asian countries, where it was found that between 74 and 94 percent of respondents agreed that a husband is allowed to rape his wife.

And in this context, UN Women has been keen to build a partnership with the institution to strengthen state accountability and community actions to end impunity, to better protect victims and ultimately to build a culture of zero tolerance.

There are already strong clues of receptivity for a more proactive role for the Ombudsman. In the Caribbean in 2011, a partnership between the Caribbean Ombudsman Association, the Association of Caribbean Commissioners of Police, UN Women and women's organisations providing services and leading advocacy was elaborated to improve police response to gender-based violence. The objectives of this Protocol of Partnership (Annex) are:

- To strengthen partnerships of agencies related to the administration of justice and victim support services; and
- To develop response protocols linking victim services, the police and offices of the Ombudsman

This Protocol of Partnership reflects the consensus to:

- strengthen the functional cooperation between the Offices of the ombudsman, victim support services and the police in responding to reports of gender-based violence
- promote access by victims to existing programs and services for victims;
- address complaints of victims and victims services with regard to public administration; and
- promote awareness of the needs and concerns of victims and the applicable laws that benefit victims of crime, including to promote the principles set out in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

And the Protocol outlines the complementary roles of police, service providers and the Ombudsmen. In relation to the latter, the role has a number of facets which draw on the existing mandates and functions of the institution:

- Receive and review complaint about the actions and/or omissions of government departments, agencies, employees, laws or policies;
- Refer victims and victim support services to programs and services as appropriate;
- Answer questions about the rights of victims;
- Provide information about the services and programs available through the government;
- Make recommendations to the government and in particular the administration of justice on how to change its policies or laws to better suit the needs and concerns of victims, and to report on those recommendations publicly.
- Regularly and actively monitor the developments of particular cases under investigation
- Be available to listen with patience to complainants especially with regard to sexual offence and gender-based violence matters

Progress

It is striking now, a year later however, despite the good will for engaging in this work, that the Protocol has not been formally activated in any country in the Caribbean. This delay and/or hesitation or lack of action appears related to the need for capacity building of Ombudsman staff. But the reality is that these offices are unlikely to get increases in staff given the competing claims on the scarce resources of the state.

In the challenge of implementing this role, the Ombudsman will have to develop expanded ways of working as well as networks of knowledge, partnership and collaboration with its natural allies, that is, the organised, credible and independent social movements and the media.

This need for a partnership building between civil society and the Ombudsman for advancing state accountability cannot be over-stated in advancing access to justice and human rights. O'Donnell argues that accountability is both vertical and horizontal. Horizontal accountability refers to the operations of intra-state systems of control while vertical accountability implies the existence of external checks on the state³. This classification, as was pointed out by Peruzzotti and Smulovitz, stresses the directionality of the system of control as well as the arenas where those exchanges take place. In the case of horizontal accountability, the exchanges take place between state agencies that provide checks and balances for each other⁴. In such a scheme, the Ombudsman would be an institution of horizontal accountability.

Vertical accountability is assured through, for example, electoral processes and through the activism of civil society and social movements. Social movements in this scheme of accountability can expose and denounce inaction or wrongdoings and in doing activate, energise or support the operations of horizontal mechanisms.

But civil society organisations need to be prodded into making more constructive use of the Ombudsman. One way would be through the encouraging the submission of communications. Within regional and international human rights complaints mechanisms there is precedent for this. The capacity of NGOs to submit communications or complaints is incorporated into several international instruments⁵. There is nothing in the legislative framework to prevent the Ombudsman from receiving communications from non-governmental organisations.

Victims of violations of gender-based violence are among the most vulnerable groups of the population. It is unlikely, without more, that they have the capacity, resources, social capital or access to information that permit a claim on the Ombudsman to respond to their experiences of

³ Guillermo O'Donnell 'Horizontal Accountability in New Democracies' as quoted in Enrique Peruzzotti and Catalina Smulovitz: Societal Accountability: The Other Side of Control. Forthcoming in Enrique Peruzzotti and Catalina Smulovitz (eds.) *Enforcing the Rule of Law. The Politics of Societal Accountability in Latin America*, Pittsburgh, Pittsburgh University Press online: http://www.respondanet.com/english/anti_corruption/publications/articles/chapter_31demayo1.doc at p 6.

⁴ *ibid*, 6.

⁵ Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 Oct. 1986, O.A.U. Doc. CAB/LEG/673 Rev.5I Art.56, American Convention on Human Rights, signed on 22 Nov. 1969, entered into force 18 July 1978, OAST 36, O.A.S. Off.Rec. OEA/Ser.L/V/11.23, doc.21, rev.6 (1979) Art. 44.

maladministration, inefficiency, indifference or downright hostility on the part of police and other actors in the administration of justice.

And so the advantage of connecting to women's rights or service organisations is their understanding of the culture of gender inequality and women's lived experiences of exclusion. They are also closer to the issues and have proximity to women who have experienced gender-based violence. Receptivity then to structured and periodic communications and partnership with women's organisations will be important for building the institutional capacity and impulse to engage with the administration of justice for addressing the range of issues that undermine access to justice.

Routine and periodic interactions with civil society actors, with women's organisations, if only to receive information, may also result in a better incorporation of this issue in the annual parliamentary reports laid by the Ombudsman.

The demand for a deeper partnership by women's organisations with the institution of the Ombudsman is not a new one. In the Caribbean at a workshop on reproductive rights in 2003⁶, the Ombudsman offices considered their role in advancing women's rights and in particular reproductive rights. The Ombudsmen agreed to:

- Collaborate with government agencies as well as appropriate NGOs to disseminate information through training and public awareness campaigns.
- Collect information and data by way of visits to institutions and analyze how to deal with the treatment of women in particular special groups such as prisoners.
- Prepare reports from the Ombudsman's office to Parliament on specific areas of abuse, which needs urgent and immediate redress and try to have the matter prioritize.

The expectation that the offices of the Ombudsman should be working through a human rights lens is echoed in the concluding comments of the United Nations treaty bodies. For example, in relation to the Czech Republic, in the 2010 consideration, the recommendation was made to strengthening the mandate of the Office of the Ombudsman as a national equality body so as to enable it to bring cases of discrimination on the grounds of sex to the courts and to represent alleged victims in court proceedings. Similarly, reviewing the Barbados report, the Committee on the Elimination of all Forms of Discrimination against Women recommended that the State party take measures to ensure that the Office of the Ombudsman incorporated a gender perspective in its work.⁷

⁶ Resolution of the Workshop on the Promotion and Protection of Reproductive Rights through the work of the Ombudsman Offices of the Caribbean. www.unhchr.ch/html/menu2/5/lacnatins-sep.doc

⁷ Committee on the Elimination of Discrimination against Women Exceptional session 5-23 August 2002 Draft Report *Rapporteur*: Ms. Rosalyn Hazelle Consideration of reports of States parties Barbados Fourth periodic report.

Conclusion

Ending impunity for all forms of violence against women is a precondition for rule of law and for women's access to justice. The Offices of the Ombudsman have a unique entry point as monitors of state administration, as catalysts of redress for citizens whose rights have been impugned, through state inaction, inefficiency or indifference. The Ombudsman also has access to the parliamentary processes and therefore, the possibility of making visible and therefore political citizens' legitimate expectations of fairness, efficiency and responsiveness of state actors.

The institution has a strong moral voice, seen as independent, authoritative, with defined jurisdiction and defined powers and accessible and for these reasons is influential. Organisations who work on transforming culture and on building political will to attain a zero tolerance to violence against women, are calling on the Ombudsman to work with governmental agencies and women's organisations to discern and address patterns of injustice that are based in inefficient and unfair administrative practices.

No doubt, given the high prevalence of gender-based violence and the scale of the continuing deficits in much of the administration of justice, the capacity to respond effectively will concern all Offices of the Ombudsmen who are typically under-resourced in many parts of the world.

Yet, there is no disputing that while the capacity to respond to individual complaints may be limited, the institution of the Ombudsman is potentially a powerful ally to bring attention to the magnitude of the problem. It can leverage its constitutionally guaranteed access to Parliament as well as to decision-makers to bring to their attention the barriers to access to justice confronted by survivors of gender-based violence.

As we enter the 16 Days of Activism (November 25 and ending on December 10th, Human Rights Day), UN Women welcomes this partnership with the International Ombudsman Institute. We stand ready to work with you at international and national levels for raising awareness about gender-based violence as a human rights issue, on strengthening state capacity to ensure non-discriminatory access to justice as well as in building civil society capacity to monitor state action to eliminate impunity.

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Annex:



Caribbean Ombudsman Association



Protocol of Partnership

Strengthening the Response of the Administration of Justice for Victims of Gender-based Violence 25-26 July 2011

The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the Caribbean Ombudsman Association in collaboration with the Association of Caribbean Commissioners of Police convened a meeting on 25-26 July, 2011 on “Strengthening the Response of the Administration of Justice for Victims of Gender-based Violence”

The objectives of this meeting were:

- To strengthen partnerships of agencies related to the administration of justice and victim support services; and
- To develop response protocols linking victim services, the police and offices of the Ombudsman.

Participants recognised that while the region had witnessed achievements in legal reform addressing gender-based violence, challenges remain for the effective implementation of laws, for ensuring access to justice on the part of victims of sexual assaults and for meeting the appropriate standards of due diligence in protecting and preventing such violence.

The meeting acknowledged that the rule of law was undermined by under-reporting as well as by high levels of attrition in the investigation and prosecution of sexual assault cases. Because of the sensitive nature of sexual violence and relationship violence, many victims/survivors do not report the crimes. A victim/survivor's reluctance to report persists partly due to the myths that erroneously place blame and responsibility for the crime on the victim/survivor rather than the perpetrator. Victim/survivors also may fail to report because of perceptions that police may be less than responsive in the timely, and consistently professional treatment and investigations of complaints.

The representatives of the participating institutions, namely, offices of the Ombudsman, victim support organisations and police services agreed to collaborate at the national level work to ensure that victims of sexual assault have equitable access to justice and that policy makers ensure the implementation of policy and legislation that are responsive to the needs of victims while paying attention to the due process rights of accused perpetrators.

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The participants shared the common vision that through respectful and effective cooperation/collaboration their institutions would seek to:

- Ensure the equitable access to justice;
- Demonstrate care, concern and courtesy for victims
- Reduce the trauma of victims of sexual offences and
- Eliminate all forms of gender based violence.

This **Protocol of Partnership** reflects the consensus of participants to strengthen functional cooperation. Specifically, through this Protocol of Partnership, the following is proposed:

- to strengthen the functional cooperation between the Offices of the ombudsman, victim support services and the police in responding to reports of gender-based violence
- to promote access by victims to existing programs and services for victims;
- to address complaints of victims and victims services with regard to public administration; and
- to promote awareness of the needs and concerns of victims and the applicable laws that benefit victims of crime, including to promote the principles set out in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The participants recommended that the partnership at national level should be informed by the following principles:

- Professionalism and clarity of institutional roles
- Technical competence
- Confidentiality
- Effective communication, networking and responsiveness

In realising the vision of the cooperation, the following principles are intended to promote fair and equitable treatment of victims:

- Victims of crime should be treated with courtesy, compassion, and respect.
- The privacy of victims should be considered and respected to the greatest extent possible.
- The safety and security of victims should be considered at all stages of the criminal justice process and appropriate measures should be taken when necessary to protect victims from intimidation and retaliation.
- Information should be provided to victims about the criminal justice system.
- Victims should be given information, in accordance with prevailing law, policies, and procedures, about the status of the investigation; the scheduling, progress and final outcome of the proceedings.

- Information should be provided to victims about available victim assistance services, other programs and assistance available to them
- The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures.
- The needs, concerns and diversity of victims should be considered in the development and delivery of programs and services, and in related education and training.
- Information should be provided to victims about available options to raise their concerns when they believe that these principles have not been followed.

It was agreed that each of the collaborating institutions at national level have complementary roles in strengthening the administration of justice for protecting, preventing and punishing gender-based violence as follows:

a) Role of the Police:

- To be impartial and thorough investigators
- Establish whether a crime has been committed and gather, evaluate and process any evidence that may exist
- Identify, apprehend and prosecute the offender/s
- Conduct the investigation in a supportive and non-judgmental manner.
- Undertake public education and awareness including safety tips on how to deal with GBV and the supports available
- Utilise a multi-agency approach in responding to reports of gender-based violence
- Support and protect victims
- Police sensitivity to victims will:
 - Promote confidence and comfort that their reports will be dealt with in a professional and timely manner
 - Help the victim to recover from the assault trauma
 - Enhance the gathering evidence in order to build a stronger prosecution case
 - Encourage victim cooperation with investigations and their willing involvement in court proceedings.

Police services may, in meeting these roles, consider:

- The establishment of specialist units for investigation of sexual assaults

- The assignment of specially trained investigators and prosecutors

b) The Role of the Office of the Ombudsman:

- Receive and review complaints about the actions and/or omissions of government departments, agencies, employees, laws or policies;
- Refer victims and victim support services to programs and services as appropriate;
- Answer questions about the rights of victims;
- Provide information about the services and programs available through the government;
- Make recommendations to the government and in particular the administration of justice on how to change its policies or laws to better suit the needs and concerns of victims, and to report on those recommendations publicly.
- Regularly and actively monitor the developments of particular cases under investigation
- Be available to listen with patience to complainants especially with regard to sexual offence and gender-based violence matters

c) Victim support organisations:

- Provide crucial crisis and long term specialized counselling, support and independent advocacy for those who have experienced any form of sexual violence
- Implement ongoing awareness drives that highlight the prevalence of sexual violence and on the importance and need for appropriate, high-quality and specialised support.
- Work with other organisations, agencies and government departments to improve the response to those who are affected by and who perpetrate sexual violence.
- Disseminate information on laws and procedures
- Undertake data collection and analysis
- Provide information on services
- Refer victims for follow up assistance- medical, police, social
- Follow up and monitor victims as they go through the justice sector
- Training for service providers
- Policy oversight

Drawing on their specific roles and functions, the participants recommended that offices of the Ombudsman, victim support organisations and police services should actively collaborate in the following areas:

- 1) Responding to individual complaints
- 2) Periodic review of systems, laws, policies and practices

- 3) Advocacy for policy reform and prevention
- 4) Public awareness for building a culture of zero tolerance for gender-based violence
- 5) Capacity development/training
- 6) Social services support
- 7) Data collection

The ways in which the active collaboration can be effected at national level could include:

- 1) Preparation of a Memorandum of Understanding to detail the modes of collaboration
- 2) Creation of an inter-agency protocol of responses to victims of sexual assault
- 3) Establishment of a standing Inter-Agency Working Group to review periodically the functioning of the Protocol for Partnership and to assess policies and practices and to make recommendations for improvements where appropriate
- 4) Establishment of integrated first response services across disciplines
- 5) Establishment of channels of communication for the reporting, monitoring and responding to individual complaints
- 6) Consideration of sharing of common services to maximise resources
- 7) Development and implementation of continuous training for collaborating institutions in areas of common need and in particular for first responders
- 8) Undertaking and dissemination of joint studies on the administration of justice response to sexual assaults
- 9) Joint advocacy and public awareness community-based outreach
- 10) Compilation of data on reports and monitoring of responses
- 11) Support services, including counselling, for service providers and their families where needed.

The participants reflected on the need for increased resources, human, technical and financial, to achieve the greater levels of partnership for the promotion of a more effective administration of justice, a culture of human rights and zero tolerance to gender-based violence. They called upon governments, inter-governmental organisations and development partners to consider supporting for the implementation of this Protocol of Partnership.