

# In the Kingdom of Morocco: Readings in the Islamic Model of Ombudsman

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## **Back to Roots: Tracing the Swedish Origin of Ombudsman Institutions Friday, June 12, 2009**

*This paper details the 1,000-year history and recent restructuring that contributed to the present Diwan al Malhalim, the ombudsman institution of Morocco. The institution combines ancient and more modern Islamic traditions with the Swedish ombudsman model and other variations. Today, the Moroccan Ombudsman is tasked with investigating grievances of complainants who see themselves as victims of unjust and abusive acts of public administrations, mediating between citizens and public institutions, through amicable efforts and compromises for equitable and just solutions, and finding creative solutions and practical suggestions conducive to reform in the administration, such as upgrading and modernizing the performance of the entities of the state, reducing red tape, urging administrative entities to adopt proximity-based policies, fighting all forms of excessive bureaucracy, and respecting the values of transparency, accountability and the rule of law.*

### **Introduction**

Over the past 200 years – more precisely, since the beginning of the 18th century – the ombudsman institution has spread extensively worldwide.<sup>1</sup>

Although the ombudsman culture has existed in ancient human societies for centuries,<sup>2</sup> the emergence of the modern state with its new institutional organizations and constitutional forms has contributed to the advent of this new generation of ombudsman institutions under various labels.<sup>3</sup> Different and intertwining factors governed their *modus operandi* and areas of intervention, from the political context and the ways of endorsing democracy as a government system to the levels of economic and social development of each

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<sup>1</sup> The Ombudsman Institution in Europe, particularly in the Scandinavian countries, dates back to the beginning of the 19<sup>th</sup> century, as the Swedish Ombudsman was set up by virtue of the Constitution in 1809, then in Denmark in 1953, and later on in Britain in 1967, spreading later to countries around the world.

<sup>2</sup> Some historians trace back the concept of the ombudsman as represented in the ancient civilizations when the rulers would sit to look into people's grievances by to the Persian kings (cf 'Kitab Al Ahkam Es-Soultania' "Sultan Rulings"), Maouardi, p. 78, El Halabi publication- 2nd edition, Cairo 1966.

<sup>3</sup> Among the names, we can mention; the Parliamentary Ombudsman, Defender of the Citizen, Defender of the People, Lawyer of the People, the Mediator, Wali El Madhalem, The Parliamentary Commissioner, Defender of Justice, the Administrative Reconciliatory and the Republic Mediator.

state. This has conferred upon the ombudsman institution the character of the ruling political regime, which in turn has been reflected in its development in different areas and cultures.

### **The Ombudsman between culture and institution**

Over time, ombudsman institutions worldwide have represented a distinctive pattern within the institutional texture of the modern state, from the dawn of the Renaissance era up to the current era of the “knowledge society.” They are not legislative, executive or judicial bodies, but rather are geared towards restoring balance to the relationship between the bodies of the state and the individuals in the community. They do this by advocating and defending the values of justice and equity, respecting the rules of law and fighting all forms of injustice, arbitrariness, abuse and tyranny. This has turned them into institutions that defend values and principles rather than practicing authority and making decisions.<sup>4</sup>

Looking back in history, we can affirm that ombudsman institutions under different designations and trends made up the first generation of institutions defending, advocating and protecting human rights in their connection with different bodies of the state.

The various historical models of the ombudsman institution worldwide share some common values, principles, and underlying philosophy. But it is extremely hard to talk about one single model.

### **The Ombudsman institution: Interaction of models**

Political underpinnings, historical conditions, civilizational references and the interaction between various models have all been crucial factors that shaped the ombudsman institution model adopted by each individual country.

While the various models of the ombudsman institution share similar principles and processes, they represent distinct schools of thought and trends.

We can, therefore, talk about the Scandinavian model, the Anglo-Saxon model, the Latin model, the Asian model, the Iberian model and still others,<sup>5</sup> just as we can talk about the typically Islamic model with its authentic features and properties.

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<sup>4</sup> The ombudsman is not one of the traditional constitutional powers in the modern state; it is rather an independent oversight institution. Some researchers consider it between the Parliamentary oversight and the judicial oversight. (Cf Braibant: *Le Contrôle Juridictionnel-Institut international d'Administration Publique*, Paris, 1968–1969.

<sup>5</sup> Many ombudsman institutions have been organized in the world in international non government organizations, including:

Association des ombudsmans et médiateurs de la francophonie;  
International Institute of ombudsman;  
European Institute of ombudsman;  
Swiss Association of Parliamentary Ombudsmen;  
The Iberian American Federation of Ombudsmen;  
Association of Mediterranean Ombudsmen;  
The Arab Network of Ombudsman Offices.

It is worth pointing to the special status of the Swedish Ombudsman institution as the oldest – set up in line with the structures of the modern state of the Renaissance era. This model had a profound effect on the emergence of ombudsman institutions all over the world. Highlighting aspects of this influence requires specialized comparative studies, but an overview of the different international ombudsman institutions reveals and corroborates the interaction between the Swedish model and the other models it inspired, especially in regards to neutrality, independence, *modus operandi*, ways of addressing grievances and inquiries, issuing recommendations and making proposals.

This interaction and cross-fertilization between different models of the institution represents a source of enrichment, pathways for exchange, communication and partnership, ultimately paving the way towards unifying the institutional practice of the functions of the ombudsman.

In this respect, *Diwan Al Madhalim* in the Kingdom of Morocco, restructured eight years ago after about 10 centuries of existence,<sup>6</sup> epitomizes today a vivid model of this interaction, while preserving the Moroccan specificities rooted in the values of the authentic Islamic culture and Morocco's rich historical heritage.

### **Wilayat Al Madhalim: Between Islamic values and historical heritage**

Since its inception, the Islamic state has been interested in asserting rights and discarding injustice in compliance with the teachings of the Holy Koran, and in accordance with the Sunna of Prophet Mohammed (peace be upon him). Although the early stages of the states's development did not allow for the accurate identification of the organizational initiatives undertaken in this respect,<sup>7</sup> it was clear that the first four Khalifs of Prophet Mohammed (PBUH) attached great importance to this trend. Imam Ali Ibn Abu Taleb, the fourth Khalif of the Prophet (35 Hegirian calendar – 654 CE Gregorian calendar) was the first to oversee hearings on behalf of victims of suspicious behaviors of officials running public affairs of the emerging Islamic community.<sup>8</sup>

With the expansion of the state and the great increase in its population and in the number of disputes and litigations, it became necessary to set up an independent entity of Wali Al Madhalim in the Amawi and Abbassid Dynasties. This creation came relatively late and its role, shape and status went through a long gradual developmental process.

Amawi Khalifs, Abdelmalik Ben Merwane and Omar Ben Abdelaziz,<sup>9</sup> and Abbassid Khalifs, El Mehdi, El Hadi, Haroun Arracheed and El Mansour all insisted on setting up and supervising a special council as a judicial body operating in compliance with the rules of the Islamic doctrine to look into the

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<sup>6</sup> Diwan El Madhalem was set up in the Kingdom of Morocco by virtue of Royal Decree n° 1.01.298, dated Ramadan 23 1422 (December 9 2001).

<sup>7</sup> See 'Al Ahkam Es-Soultania' (Sultan Rulings), Maouardi, *ibid* p. 77.

<sup>8</sup> See 'Al Khotat' by El Maakrizi, Volume 3, p. 126.

<sup>9</sup> 'Nihayat Eml Arb' by En-Nouiri, p. 269, Edition Dar El Koutoub El Missria.

grievances of the claimants.<sup>10</sup> The personal attendance of the Khalifs themselves prompted complainants to resort to this council to lodge their complaints about the behaviors of officials and dignitaries, which they would not have done otherwise. Later, the major concerns and urgent priorities of the state led the Khalif to delegate the supervision of this body to other individuals selected for their piety and knowledge.

### **Institutionalization of Wilayat Al Madhalim in the history of the Moroccan State**

The various ruling families in Morocco recognized the importance of the Wilayat Al Madhalim institution. During the Almoravid dynasty (in the 11<sup>th</sup> and the 12<sup>th</sup> centuries), particularly under the rule of Ali Ben Youssef (1106–1143 CE), there existed the function of the “Officer in charge of grievances and complaints.” The Almohad dynasty, particularly during the rule of Yakoub El Mansour, saw the secondment of an ad hoc council to the presidency of the Khalif himself with the presence of leading scholars and statesmen.<sup>11</sup>

The Almarinid dynasty (13<sup>th</sup> century AC.) followed suit by setting up advisory and consultative councils operating in a decentralized fashion, with a view to anticipating pre-emptively the uprisings against the authority of the Sultan in some sensitive regions as a result of unjust dealings of some governors or *walis* representing the Sultan, in addition to preventing brotherhoods from gaining clout through arbitration and mediation between different tribes. Some sources indicate that Abderrahmane Ben Khaldoune, the great Maghrebian scholar and prominent sociologist, was appointed Wali Al Madhalim in Fez City.<sup>12</sup>

Wilayat Al Madhalim, the Islamic Ombudsman, gets its legitimacy from two sources: The moral authority of the Wali and the fairness of the judge. The Saadi dynasty that ruled Morocco over the 16th and 17th centuries reorganized this institution and bestowed further prestige upon it by having Khalif Ahmed El Mansour Eddahbi (1578–1603 CE) preside over the council ruling on the grievances of the citizens with the presence of the scholars and the clergy. However, it was not until the rule of the Alaoui dynasty that this entity took the form of a ministry of grievances. The Alaoui dynasty extended the scope of the functions of Wilayat Al Madhalim institution to fight abuses of civil servants and the unjust rulings of some judges and all the decisions infringing the principles of Islamic Shariaa seeking equity among people, regardless of status, class and religion.<sup>13</sup>

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<sup>10</sup> Refer to the book ‘Lectures on the History of the Islamic Nations’ by Cheikh Khodri, p. 82, fourth edition, Cairo.

<sup>11</sup> Refer to ‘Stages of Wilayat El Madhalem throughout History’, by M. Hachem El Alaoui.

<sup>12</sup> Ibn Khaldoune took the position of Wali El Madhalem during the Marinid Dynasty, upon his arrest and imprisonment for two years by Abi Anan El Marini in 753 Hegir.

<sup>13</sup> For further details, refer to ‘Pride and Might in the Systems of the State- Vol. 2, by Abderrahmane Ben Zidane.

This ministry was one of the most significant structures of the government. The minister in charge would register and sum up all the complaints before submitting them to the Sultan for examination and a final ruling, or enforceable instructions. This reflected the interest of the Alaoui dynasty, which ruled Morocco since 1666, in ascertaining the rights and punishing the officials and the governors for any abuse of office or infringement. Sultan Moulay Ismael used to devote two weekly sessions to look into disputes arising between the Makhzen (the state) and the citizens. It should also be pointed out that his grandson, Mohammed Ben Abdellah (1757–1790 CE), the great king and scholar, and the first to recognize the independence of the United States of America in 1776, was supportive of controlling governors and officials and punishing by dismissal those who indulged in mismanagement or misuse of authority.

All subsequent Alaoui kings have displayed the same degree of concern for people's grievances, particularly Moulay Slimane, Moulay Abderrahmane, and Moulay Mohammed Ben Abderrahmane, who gave priority to fairness and integrity when choosing judges and officers in charge of people's grievances, and monitored their dealings with people's issues and cases.

In this regard, one can mention Hassan Al Aoual, who was known for his harsh punishment of the Walis who laid their hand on other people's property or violated people's dignity. So the function of the Moroccan Ombudsman known as the Minister of Grievances was entrusted with trustworthy and virtuous scholars and administrators considered as central inspectors of the authorities looking into their infringements and adjudicating on complaints against them.

Upon the imposition of the French protectorate over the kingdom in 1912, this ministry was discontinued, awaiting the return of sovereignty in 1955 to see the advent of the Council of Research and Instruction.<sup>14</sup> This council played a key role in receiving complaints and directing them to the administrative authorities, but the expected results from its work did not live up to expectations in terms of justice, because of the lack of the necessary provisions for that purpose. Therefore, the Ombudsman institution was radically revamped, taking into account the history and different experiences in other countries sharing the same values.

### **Diwan Al Madhalim: Between the religious reference and history**

As mentioned earlier, adopting an authentic ombudsman model did not preclude learning from positive aspects of some international experiences in this very sensitive regard pertaining to defending and protecting people's rights before an administration with increasing and complex prerogatives.

We are especially pleased to be celebrating the bicentennial anniversary of the famous Swedish model, which had such a profound effect on many modern institutions in the first half of the 20<sup>th</sup> century. Its operating mode was a

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<sup>14</sup> This office was set up pursuant to The Royal Decree n° 1.56.279 dated Rabiaa II 1376 hegir (November 10 1956).

source of inspiration and reference to dozens of ombudsman institutions worldwide. Many countries that regained their independence at this time reorganized their administrative, legal and political structures to incorporate modern administration and management. Two factors presumably account for the adoption of almost standardized approaches to face up to the challenges and difficulties of the day-to-day activities of the governments and citizens:

Many new governments favored the entire or partial adoption of the legislation and systems inherited from their former colonizers, because of their confirmed feasibility and relevance. As well, we should admit that the predisposition and willingness to move towards a European modern model dictated indirectly by the dominant culture in the region, for historical and political reasons.

In addition to this, there were the commendable efforts of many international organizations operating in the political, legal, financial, and human rights fields, along with several international conventions ratified by most countries all over the globe. Multilateral cooperation, compliance with the provisions of international conventions in the area of human rights, and bilateral cooperation, notably between countries of the North and of the South, also played a role.

Countries with long-standing Islamic traditions<sup>15</sup> had to confront the novelties of modern community life and the emergence of new administrative dilemmas. They had to take one of two courses of action:

- Retain, as some Arab and Islamic countries advocated, the traditional model – which could not be dissociated from the traditional administrative judicial system, by making Wilayat Al Madhalim a truly judicial administrative system; or,
- Cater more to the independence of the judicial system and adopt the ombudsman model as recognized worldwide, avoiding interfering with the proceedings of the courts, and focusing on facilitating the interaction between the administration and the citizen, seeking as much as possible amicable solutions and compromises to end disputes. It should be admitted that such an approach requires a certain degree of democracy and freedom so that the ombudsman institution can undertake its role to the fullest.

In our local context, the course chosen was in sync with the modern administrative structure and in compliance with the separation of powers and checks and balances. From that perspective grew the interest in the operating mode of the ombudsman, while guaranteeing the main conditions for its success:

- Full independence from the major traditional constitutional powers: Diwan Al Madhalim was put right next to the highest authority in the country;

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<sup>15</sup> This applies for instance to Diwan El Madhalem in the Kingdom of Saudi Arabia, which is an institution combining the features of the judiciary and the advisory role and the oversight function; refer to Saudi Royal Decree n° 8759/13/7 dated 17/9/1374.

- Refraining from interfering with the cases before the courts;
- Credible prerogatives to ensure compliance with the ombudsman's proposals and recommendations, with a view to finding appropriate and swift solutions to the cases at hand; and
- Stressing the principle of equity in the proceedings of the institution and urging it to attach particular attention and flexibility to complaints relating to special cases and based on fair grounds.

Based on all these conditions enshrined in the law instituting Diwan Al Madhalim, the kingdom of Morocco has ended up with an institution combining the historical properties of Wilayat Al Madhalim in the Islamic civilization and the imperatives of modern organization for the modern state, based on the separation of powers and identifying the prerogatives of each authority and the scope of its intervention.

The ombudsman institution has been reorganized in accordance with modern standards so that it can fulfill its role effectively in protecting the citizens against the abuses of the administration and defending the values of justice and equity. It also works to disseminate and promote the culture of human rights in its capacity as a national independent institution and one of the pillars of the rule of law and democracy, and promotes communication between the citizens and the administration through the respect of the rule of law and human rights.

Along the lines of this philosophy set out by the head of the state, His Majesty Mohammed VI, the Ombudsman institution has been revamped on new grounds and in accordance with tenets and norms by the great international ombudsman institutions such as the Swedish Parliamentary Ombudsman, the French Mediator, the Defender of the People in Spain and other creative and successful models.

The underpinnings of the modern Islamic model of the ombudsman can be summed up as two main pillars:<sup>16</sup>

1. Making the national Ombudsman in the kingdom an authentic institution preserving the historical heritage of Morocco dating back to more than 13 centuries.<sup>17</sup> It has been seconded to the monarchy, which typifies in Moroccan political heritage and the modern constitution the symbol of national sovereignty, so that it can enjoy full independence from the legislative, executive and judicial powers. This is the key to the Moroccan Ombudsman institution carrying a historical name that is loaded with meaning and invokes administrative structures rooted in the history of the Islamic state, namely *Diwan Al Madhalim*.

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<sup>16</sup> Refer to an article by Abdellilah Fountir, entitled 'Diwan El Madhalem Institution: an initial overview of its functions and its legal character', p. 23, Diwan El Madhalem Journal- vol. I- Issue 1, December 2004, Morocco.

<sup>17</sup> Refer to El Hassan Simo's article entitled 'Diwan El Madhalem between authenticity and openness to common human values', p. 19, Diwan El Madhalem Journal, Issue 1, December 2004, Morocco.

2. Restructuring the institution and defining its scope of operation in a modern fashion in accordance with the principles of modern constitutional organization, notably the principles of separation of powers, definition of the prerogatives of each power, and checks and balances.<sup>18</sup>

The Moroccan Ombudsman institution, with its Islamic reference, has been upgraded to keep up with the developments in the modern Kingdom of Morocco. It no longer assumes responsibility as a supreme oversight institution over all the bodies of the state including the judiciary. Instead, it now has three basic tasks:<sup>19</sup>

3. Looking into the grievances of complainants who see themselves as victims of unjust and abusive acts of public administrations;
4. Institutional mediation between citizens and public institutions providing services, through amicable efforts and compromises for equitable and just solutions; and
5. Finding creative solutions and practical suggestions conducive to reform in the administration, such as upgrading and modernizing the performance of the entities of the state, reducing red tape, urging administrative entities to adopt proximity-based policies, fighting all forms of excessive bureaucracy, and respecting the values of transparency, accountability and the rule of law.

The third task turned the Diwan Al Madhalim institution into an effective proposal force. The office puts forward, on an annual basis, a set of practical suggestions to the public authorities at all levels, thus helping to lay the ground for transparent administrative proceedings based on the rules of good governance, human rights values and the principles of justice and equity.

The underlying principles and criteria for the restructuring of Diwan Al Madhalim and the definition of its scope and prerogatives may be presented as follows:

**Independence:** The institution should be independent of any other power – legislative, executive or judicial – so that they cannot interfere with its operations in any manner whatsoever. Wali Al Madhalim is directly appointed by His Majesty from among those personalities who are well known for their integrity and independence and not affiliated with any political party. The institution also has its own autonomous budget.

**Professionalism:** This is an important criterion upon which the institution has been restructured, by adopting specialization in cases referred to Diwan Al Madhalim and by setting up a functional organization chart depending on the areas and services of various public entities. There is a regulatory and transparent process for analyzing the grievances and complaints from all legal, administrative and technical aspects. After the claims have been verified as well grounded, the case is referred to the administration concerned, with prac-

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<sup>18</sup> See Ahmed Harti El wardi- Diwan Al Madhalim Institution, an original experience for the promotion of mediation between the administration and the citizens- page 25- Diwan Al Madhalim Journal n°1.2004- Morocco.

<sup>19</sup> Articles 5, 6, 10, and 12 from the Royal Decree setting up the Institution. Mentioned earlier.

tical and fair solutions proposed for the settlement of the issue to repair the damage and remove any injustice resulting from the actions of the administration. In addition to this, the institution conducts special sector-related studies in areas where the citizens suffer from unfair treatment in their dealings with the public administration. The aim of these studies is to initiate measures conducive to the betterment of public services, the upgrading of the performance of administrative bodies and the reform of the legal system governing their operations.

**Governance:** This is a major cornerstone in the management of the institution. Good governance is visible in the management style pursued and based on the use of new information technologies throughout the various stages of the examination of the grievances. There are pre-set rules and procedures and a comprehensive and integrated information system. Governance is also perceptible in the work of the institution, in the diversity of its human resources, made up mostly of a consultative unit bringing together senior judges, experts in public areas, specialized consultants, researchers, engineers, and administrative and technical staffs.

**Communication:** This is considered one of the main tenets of the institution in its relationship and dealings with its surroundings and the different categories of complainants – nationals and foreigners, as well as individuals and groups. The institution works in accordance with a national communication action plan addressed to citizens and officials in various public administrations, in addition to regular special awareness-raising campaigns – on the various media channels and on the Internet – aiming at building communication bridges between the administration and the citizens. The institution offers services of guidance and orientation to all citizens so they get acquainted with the administrative procedures, the public services and administration and the public utilities. It has also simplified the procedure of lodging complaints, making this an effective communication tool so that complainants can exercise their rights. Diwan Al Madhalim has made sure that filing complaints is a process free of charge, and put in place a mechanism for monitoring them until the equitable settlement stage.

The legislator has entitled Wali Al Madhalim to a set of tools leading the administration to abide by the rule of justice and equity in tackling citizens' issues. Internal regulations stipulate that the institution can conduct investigations inside public administrations to verify the genuineness of the information and documents that they put forward. It can also submit reports to the Prime Minister (as head of public administration) with regard to any impediment or interference from any official or civil servant, so that appropriate disciplinary measures may be taken.

In order to speed up the process of finding solutions to the cases at hand and as part of its ongoing communication with the different departments concerned, Wali Al Madhalim has set up joint committees with some ministries, to study the case files in the premises of the institution and make the most effective and swiftest decisions.

Furthermore, Diwan Al Madhalim has official interlocutors acting as general inspectors of ministries, whose primary task is to follow up the grievances referred to them by Wali Al Madhalim and report on the outcomes within the prescribed legal periods.

These, then, are the grounds that the legislator has taken up in revamping the Moroccan Ombudsman, and the principles and criteria followed by the institution.

Cooperation and partnership relations between Diwan Al Madhalim and its counterparts worldwide have substantially contributed to enriching its experience exchanging expertise. This has entitled it to a special status in the different international ombudsman forums and networks.

It has managed, thanks to the steady support of its French and Spanish partners, to set up the Association of Mediterranean Ombudsman that it is currently heading, energize the Arab network of the offices of the Ombudsman, and occupy a leading position in the Association of the Francophone Mediators, where it is now acting as vice president. It is also hosting a training centre for experience sharing.

We firmly believe that fostering effective and productive cooperation between ombudsman institutions is the only way to consolidate their position within individual nations and enhance their presence worldwide as standalone institutions dedicated to defending the rights of the citizens, disseminating the values of justice and equity, promoting the rule of law and moralizing public administration all over the world.

In this respect, Diwan Al Madhalim is highly proud of the special appreciation shown by the third United Nations committee for the UN draft resolution that seeks, for the first time ever in the history of the Ombudsman and Mediator institutions, to recognize their role in promoting and protecting human rights and encourage countries to implement this role and give it the attention it deserves.

Diwan Al Madhalim symbolizes in the Kingdom of Morocco a distinctive human rights landmark and a national institution advocating equity and justice to assert rights and remove prejudice. That is the very mission bestowed upon Wilayat Al Madhalim over the history of Islamic civilization in its glorious days in the Kingdom of Morocco.