

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

BEST PRACTICES FOR OMBUDSMEN

QUERY

Could you please provide an overview on best practices for Ombudsmen, focusing especially on the Asia Pacific region?

CONTENT

1. What is an Ombudsman?
2. International standards and best practices
3. Country examples
4. References



Author(s)

Sofia Wickberg, Transparency International,
tihelpdesk@transparency.org

Reviewer(s)

Robin Hodess, PhD, Transparency International

Date

28 August 2013

SUMMARY

The Ombudsman Office represents a link between citizens and their government and administration, with the mandate to protect citizens' rights against human rights violations and maladministration. The Ombudsman has been defined as "the most popular contemporary innovation in the field of administrative accountability" (Asian Development Bank, 2011).

Given its role and mandate, it is essential that the Ombudsman enjoys sufficient independence to constitute a credible interlocutor. Independence is achieved through regulated appointments, adequate resources and protection from political interference. The Ombudsman needs to operate in a framework that guarantees his/her neutrality and impartiality, ensuring equal access to the office's services as well as an absence of conflicts of interests. Finally, the Ombudsman needs to maintain confidentiality to the greatest extent possible.

This paper gives an overview of the structure and role of the Ombudsman Offices in Indonesia and Pakistan, which are both considered by experts to be relatively strong examples.

1 WHAT IS AN OMBUDSMAN?

Role and origin

The Ombudsman's function and role is to protect a country's citizens "against violation of rights, abuse of powers, error, negligence, unfair decisions and maladministration" and to encourage the government and the public administration to be more accountable to the public and more open and transparent (International Ombudsman Institute).

The modern concept of "Ombudsman" comes from Sweden, where a Parliamentary Ombudsman (*Justitieombudsmannen*) was established in 1809 to oversee the actions of the government, with the characteristic of being independent from the executive power. *Ombudsman* means "representative" in Swedish.

The Ombudsman represents a connection between citizens and their government. According to Transparency International, the Ombudsman is one of the key pillars of a country's governance system, as considered by the National Integrity System Assessments.

Responsibilities of the Ombudsman

The Ombudsman is a state body responsible for handling complaints from the public regarding decisions, actions or omissions of public administration. The power and breadth of functions of the Ombudsman can, however, vary from one context to the next.

Ombudsman Offices ought to provide free and equal access to their services for everyone and complaints are addressed directly to the Ombudsman Office. The latter's objective is to deal promptly and effectively with complaints, either by directing the complainant to the relevant institution or by undertaking an investigation. In many contexts the Ombudsman is entitled to propose remedies to cases, such as decision reviews, apologies or financial compensations. Unlike courts, the Ombudsman does not make legally-binding decisions but gives recommendations to public authorities (European Ombudsman).

In addition to handling complaints, the Ombudsman and the Ombudsman Office proactively work to improve the quality of public services and the public administration (European Ombudsman).

Interestingly, the use of Ombudsmen to handle complaints and resolve conflicts has spread to many types of organisations, including local public agencies, colleges and universities, corporations, hospitals and non-governmental organisations (International Ombudsman Association).

2 INTERNATIONAL STANDARDS AND BEST PRACTICES

The standards and best practices below are drawn from the International Ombudsman Association's (IOA) set of standards of practice and best practices for Ombudsmen working in government entities, corporations, universities, non-profit organisations, and non-governmental organisations, and the Core Principles of Ombudsmanship as adopted by the Asian Ombudsman Association in 2010.

Independence

The independence of the Ombudsman and his/her office is essential for it to fulfil its role satisfactorily. Independence entails a number of requirements for Ombudsman Offices.

- The Ombudsman shall be established by law and report to the legislative branch of government. The mandate of the Ombudsman should be clearly spelled out.
- The Ombudsman and the Ombudsman Office should be independent from other state bodies. It should be made clear in the relevant regulations that the Ombudsman is not subordinate to senior officials. The Ombudsman should not be appointed by any agency under its jurisdiction.
- The Ombudsman does not hold another position which might compromise his/her independence.
- The Ombudsman holds sole discretion over the decision to act regarding individual concerns and trends. The Ombudsman may initiate action on concerns identified through his/her own observation.
- The Ombudsman should be protected from retaliation and act without the interference of

other bodies. The Ombudsman should only be removed from his/her functions in case of neglect of duty, incapacity or misconduct, and only through a fair and transparent procedure.

- The Ombudsman should have access to all information and all individuals in the government and administration, as permitted by law.
- The Ombudsman should enjoy financial and operational independence, select his/her staff and manage his/her budget and operations independently.

Global Integrity examines the independence of the Ombudsman in its Integrity Scorecard methodology. To ensure independence and effectiveness, Global Integrity argues that the Ombudsman needs to be protected from political interference and arbitrary removal, have adequate financial and human resources and the ability to manage them independently (Global Integrity).

Similarly, the methodology of Transparency International's National Integrity System Assessment looks at the legal basis for the existence of the Ombudsman, its recruitment processes, the nomination process for the Ombudsman, professional incompatibilities, length of mandate and removal procedures, control over staff and immunity, among others.

Accountability

According to international standards, accountability is an essential feature of a credible Ombudsman Office.

- The Ombudsman should be accountable in the performance of duties and regularly report to stakeholders on its activities and performance.
- Annual reports should be produced regularly and disseminated widely.
- The Ombudsman and his/her personnel should review and monitor their own performance and effectiveness regularly with the help of appropriate performance indicators.
- The Ombudsman Office should have an internal complaint system to act on complaints brought against its personnel by the public.

Neutrality and impartiality

Partly as a consequence of its independence, the

Ombudsman should act with neutrality and impartiality.

- The Ombudsman should be neutral, impartial and unaligned.
- The Ombudsman should strive for fairness and objectivity in its treatment of people and consideration of issues. It advocates for equitably-administered processes and should therefore guarantee impartial access, including to those with disabilities, requiring language interpreters or flexibility in working hours.
- The Ombudsman should not advocate on behalf of any individual or group.
- The Ombudsman should not be serving in any additional role that could compromise his/her neutrality. He/she should not be aligned with any formal or informal association within the administration that could create actual or perceived conflicts of interests. There should be rules or regulations in place to handle conflicts of interest.
- The Ombudsman should have no personal stake or interest in, and incur no gain/loss from the outcome of an issue.
- The Ombudsman has the responsibility to consider the legitimate concerns and interests of all individuals affected by an issue under scrutiny.

In addition, experts recommend that the qualifications to select the Ombudsman shall ensure the selection of an individual who is widely respected among different political groups for his or her impartiality and fairness. If the Ombudsman is elected, a supermajority would help to ensure that the person is widely recognised as impartial (Gottehler, Hostina, 1998).

Confidentiality

The confidentiality of the Ombudsman is a crucial characteristic that determines the credibility of the institution as a complaints recipient.

- The Ombudsman should ensure all communication with those seeking his assistance is carried out in strict confidentiality. He/she shall not reveal the identity of any individual contacting the institution or any information provided in confidence that may lead to the identification of

the complainant.

- The Ombudsman may not be forced to testify or produce records. Communications between the Ombudsman and others are considered privileged, and privilege belongs to the Ombudsman and his/her office.
- The Ombudsman maintains information in a manner that guarantees confidentiality. S/he prepares data and reports in a fashion that protects the identity of complainants.

Principles for Ombudsman investigations

Some Ombudsman Offices have the power to conduct investigations into received complaints. The legal basis for such capacity is to be found in a country's constitution or law establishing the institution.

The United Nations Development Programme (UNDP) has developed guides for Ombudsman Offices about how to handle complaints and investigations. It is important to note that Ombudsman investigations are not criminal investigations. This type of investigation is administrative; it is an inquiry that seeks to determine the facts, find the relevant laws to which the situation applies, produce findings and make recommendations to resolve or redress a situation.

UNDP's guides encourage Ombudsman Offices to adopt regulations, policies and procedures that determine and frame how the organisation functions. Such documents can help the institution to be efficient, effective and consistent in its operations.

Investigations begin with the receipt of a complaint by mail, email, telephone, visits etc. The Ombudsman Office collects and records the information necessary to establish the way forward regarding the complainant, the agency subject to the complaint and the act in question. The law determines whether anonymous complaints can be received.

Complaints can be divided into three categories: complaints about human rights violations, complaints about maladministration, and requests to the Ombudsman as a first point of contact for information regarding other institutions. The legislation establishing the office defines the prerogatives of the

office and the type of complaints it can handle. It is the responsibility of the complaint recipient within the Ombudsman Office to provide the complainant with the necessary information about the mandate of the Ombudsman. If the complaint falls within the realm of the Ombudsman, there are four possible actions: the Ombudsman can advise the complainant to pursue available remedies directly with the agency in question, assist the complainant to achieve a resolution, act as a mediator between the complainant and the agency, or start an investigation.

In some cases, if the law provides, the Ombudsman can initiate investigations without having received a complaint.

Once the decision to investigate has been taken, the Ombudsman must notify the agency subject to the complaint and give it an opportunity to respond. The Ombudsman can determine whether parties may be represented and advised by legal counsels. During the investigation, the office can call upon individuals to testify and produce information. The UNDP guidelines encourage internal debates within the office to consider a broad range of opinions, but indicate that it is important that staff remain neutral until the end of the investigation.

The Ombudsman Office produces a preliminary report after each completed investigation and gives each person or agency subject to complaint the opportunity to read the report and comment. These comments should always be integrated into the final report. The final report is presented to the complainant, to the authority in question, and to anyone who played a role in the investigation. The UNDP guidelines underline that Ombudsman communications and publications are privileged and cannot be used as a basis for lawsuits charging defamation, libel or slander.

For more details regarding good practices in handling complaints and investigations, please read [UNDP's Guide for Ombudsman Institutions](#).

3 COUNTRY EXAMPLES

The examples of Indonesia and Pakistan described in this paper were chosen on the basis of the enquirers' specific request and the relatively positive expert assessments of these countries with regard to

their Ombudsman institutions. Given the urgency of the query, this should not be considered an exhaustive list of regional good practices.

Indonesia

The Indonesian National Ombudsman Commission was set up in 2000 by presidential decree and is governed by the 2008 Law No.37 on Ombudsman of the Republic of Indonesia.

Functions and responsibilities

The Indonesian National Ombudsman Commission was set up to encourage public participation in the development of the necessary conditions to eradicate corruption, collusion and nepotism; to protect people's right to public services, justice and welfare; to capture knowledge about the needs of citizens and provide an impartial resolution mechanism; and to receive and follow up on complaints from the public about irregularities in the administration.

The commission receives complaints about maladministration and has the prerogative to conduct investigations. In addition, it is one of the few Ombudsman Offices in Asia that has the right to launch investigations about irregularities in the administration without having received a complaint (Asian Development Bank, 2011). In 2011, the Ombudsman Office received 5,584 complaints, according to its annual report.

The Indonesian Ombudsman is also responsible for raising public awareness. The institution conducts awareness programmes to inform citizens about their entitlement to swift delivery of public services and their right to lodge complaints with the Ombudsman Commission about misconduct in the public administration (Asian Development Bank, 2011). The commission publishes regular reports about its activities as well as a magazine and research (Indonesian National Ombudsman Commission).

Independence, neutrality and confidentiality

According to Global Integrity's 2011 Indonesia Scorecard, the Indonesian National Ombudsman Commission is protected from political interference

and removal without justification, both by law and in practice. This report indicates that the office has adequate financial and human resources to fulfil its duties, receives regular funding and is in charge of its own staff appointments (Global Integrity, 2011).

The Head of the Ombudsman Office is elected by the Indonesian House of Representatives, among candidates suggested by the president of the Republic.

Pakistan

Pakistan has a distinctive set-up for its Ombudsman Office as it has adopted a decentralised structure. Pakistan has seven Ombudsman institutions (three provincial and four federal). The federal Ombudsman Offices were set up between 1983 and 2000 by ordinance; they are the Federal Ombudsman (*Wafaqi Mohtasib*), the Federal Tax Ombudsman, the Banking Ombudsman (*Mohtasib*) and the Federal Insurance Ombudsman, the last three having very specific mandates. There is no overlap of the functions of these Ombudsman Offices. This section will focus particularly on the Federal Ombudsman, since it shares the most similarities with other Ombudsman Offices.

Functions and responsibilities

The authority of the Federal Ombudsman is limited to complaints lodged against officers and staff of federal agencies. Complaints against officers and personnel of local government agencies are under the realm of the Ombudsman Office of the province concerned. The provincial Ombudsman Offices have similar powers and functions to those of the Federal Ombudsman, but are limited geographically (Asian Development Bank, 2011).

Ombudsman Offices in Pakistan have the authority to conduct investigations into complaints received, and can also launch investigations on their own initiative. The Federal Ombudsman has the power to utilise alternative modes of dispute resolution, such as mediation, conciliation or arbitration to accelerate the settlement of a complaint (Asian Development Bank, 2011).

The legislative framework gives the Federal

Ombudsman sufficient powers to compel the testimony of individuals and the production of documents. The Ombudsman Offices have the power to enter and search any premises, with powers similar to those of the country's Supreme Court in matters of punishment for contempt (Asian Development Bank, 2011).

The Federal Ombudsman has the responsibility to inform the public and raise awareness. To achieve this, his/her office publishes annual reports, press releases and public notices on important actions taken to redress public grievances (Asian Development Bank, 2011).

Independence, neutrality and confidentiality

Pakistan's Federal Ombudsman enjoys a strong reputation among citizens and has established itself as an increasingly popular and vigorous accountability body.

Global Integrity considers Pakistan's Federal Ombudsman to be "strong", as examined by its Integrity Indicators (Global Integrity, 2010).

The Federal Ombudsman has adequate resources to undertake its tasks and receives regular funding, according to experts. Global Integrity refers to an annual report produced by the Federal Ombudsman mentioning that many staff members were hired on a contractual basis, which made the situation relatively precarious (Global Integrity, 2010).

The Ombudsman is not a parliamentary body. He/she is appointed by the president, which presents a certain number of risks for his/her independence. Experts note that the office, however, operates within a legal framework that encourages independence and neutrality. A number of deficiencies need to be addressed with regards to the management of staff and finances (Asian Development Bank, 2011).

4 REFERENCES

<http://www.mohtasib.gov.pk/>

Asian Development Bank, 2011. *Strengthening the Ombudsman Institution in Asia.*

<http://www.adb.org/sites/default/files/strengthening-Ombudsman-asia.pdf>

Global Integrity, 2011. *Indonesia – Scorecard 2011 National Ombudsman.*

<http://www.globalintegrity.org/report/Indonesia/2011/scorecard>

Global Integrity, 2010. *Pakistan – Scorecard National Ombudsman.*

<http://www.globalintegrity.org/report/Pakistan/2010/scorecard>

Gottehler Dean M., Hostina Michael, 1998. *Essential Characteristics of a Classical Ombudsman.*

<http://www.usOmbudsman.org/documents/PDF/References/Essential.PDF>

International Ombudsman Association, no date. *What is an organizational Ombudsman?*

<http://www.ombudsassociation.org/resources/what-ombuds>

International Ombudsman Association, 2007. *Code of Ethics.*

<http://www.ombudsassociation.org/about-us/code-ethics>

International Ombudsman Association, no date. *IOA Standards of Practice & IOA Best Practices.*

<http://www.ombudsassociation.org/about-us/mission-vision-and-values/ioa-best-practices-standards-practice>

International Ombudsman Institute, no date. *About the IOI.*

<http://www.theioi.org/the-i-o-i/about-the-oi>

Ombudsman Republik Indonesia, 2011. *Annual Report.*

<http://www.Ombudsman.go.id/en/publikasi/laporantahunan.html>

UNDP, 2006. *Guide for Ombudsman Institutions: How to Handle Complaints.*

<http://www.scribd.com/doc/151055216/Guide-for-Ombudsman-institutions-how-to-handle-complaints>

UNDP, 2006. *Guidelines on Ombudsman Investigations.*

<http://europeandcis.undp.org/search/?q=Ombudsman>

Wafaqi Mohtasib of Pakistan, 2013. *Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order 1983.*

“Anti-Corruption Helpdesk Answers provide practitioners around the world with rapid on-demand briefings on corruption. Drawing on publicly available information, the briefings present an overview of a particular issue and do not necessarily reflect Transparency International’s official position.”