

OMBUDSMAN INSTITUTIONS AND MINORITY ISSUES

A GUIDE TO GOOD PRACTICE

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FOREWORD

The ombudsman is a key institution in a democratic society, able to offer free and flexible solutions to people's complaints of maladministration by the authorities or of human rights abuses. While the institution is well established in Western Europe, newer democracies are experiencing a dynamic period of development and growth of these institutions, in their various forms. In many countries in the last few years new ombudsman offices have been established, legislation passed or amended, and/or a focus on human rights, including minority rights, strengthened. Interestingly, there has been a corresponding development in Western Europe recently, with certain human rights or discrimination bodies reinventing themselves so as also to be able to accept complaints from the public about discrimination.

Key to this dynamic development is strong networking between institutions, which allows experience and knowledge to be shared. This becomes particularly important for the recently established institutions still finding their feet and their voice, and for the many institutions operating with the limits of financial or political independence placed upon them. In this regard, the European Centre for Minority Issues (ECMI) has for the past 2 years managed a network of ombudsman institutions in the wider Europe, supporting them in their work with minority issues, encouraging the establishment of specialized structures for minority issues within those institutions, and facilitating the exchange of information through training workshops, conferences and online resources. Indeed, a draft of this Guide to Good Practice was submitted to the network for their feedback and input at the project's inaugural conference. Supported by a team of experts in the field, who are the authors of this Guide, the project has allowed for much liaison with our network institutions, and other agencies working on ombudsman issues, increasing ECMI's own understanding of the issues and realities facing the ombudsmen in different countries.

I take this opportunity to express ECMI's sincere thanks to the project's team of experts, Alan Phillips, Rob Dunbar, Kristin Henrard, Birgitte Kofod Olsen, Dženana Hadžiomerović, Andrea Krizsán and Bjarke Bøtcher for their energy and expertise; also to Alexander Morawa and Christine Lucha who worked on initial drafts of this Guide, to Verica Grdanoska for her invaluable publications support, and to Marnie Lloyd for leading the project. Many thanks also to the sponsors of ECMI's Ombudsman Project: the German Federal Ministry of the Interior, the Royal Danish Ministry of Foreign Affairs, the Minister-President of Schleswig-Holstein and the Royal Norwegian Ministry of Foreign Affairs. The publication of this Guide has been made possible only by the generous financial support of the German Federal Ministry of the Interior. Finally, ECMI thanks the ombudsman institutions and supporters in our network for their interest and cooperation with our project.

ECMI is convinced of the potential of ombudsman institutions to protect minority interests in a democratic state, and it is sincerely hoped that this Guide will provide a useful tool for training and to spark discussion for institutions in the development of their capacities for dealing with minority issues.

Marc Weller
Director, ECMI
November 2004

INTRODUCTION

The ombudsman's function as it relates to minorities

Ombudsman institutions take many different forms in different countries. Some commentators would narrow the label of 'ombudsman', applying it only to a national parliamentary ombudsman; others would widen the definition so as to also include human rights commissions, petitions committees and private sector ombudsman structures. Given the multitude of different forms, an exact definition of 'ombudsman' is difficult to provide.

The traditional role is as a reactive solver of public complaints, in which the ombudsman provides a check on the power of the executive/administrative branch and ensures accountability in the state–citizen relationship. In general, the institution of the ombudsman helps both to reinforce the system of human rights protection and to improve relations between the public authorities and the citizens. It can provide a flexible and quick remedy to members of the public in cases of maladministration by administrative bodies. The ombudsman model has special practical significance in new democracies where, in addition to the state–citizen relationship, a history of hostile conflict within a regime, and frequently between ethnic groups, is at issue. Moreover, the ombudsman can have special significance for minority communities, for whom a flexible, free and less formal approach can offer access to remedies that judicial systems may not be able to provide.

Ombudsman institutions may be established nationally, but also locally (state or province level) or regionally (e.g. the European Ombudsman). The ombudsman may have far-reaching powers (e.g. to investigate complaints, with a quasi-judicial role) or its powers may be much more limited, with more reliance being placed on the art of persuasion. Similarly, the mandate of the ombudsman may be very general (parliamentary or 'classical' ombudsman), or be thematic (e.g. human rights, health, children, privacy, ethnic discrimination). The role of the ombudsman can also be different, ranging from impartial mediator between citizen and state, to advocate for particular vulnerable groups in society.

Specialized institutions

While research has previously been undertaken in relation to national ombudsperson and human rights institutions, there has not yet been significant research into the role of specialist minority ombudsperson institutions. This Guide begins to fill that gap.

Human rights issues naturally fall into the realm of competence of a classical ombudsman as it is a defender of citizens' rights. Similarly, the mandates of very many existing ombudsman institutions allow them to deal with minority rights issues. However, more recently there has been a massive increase in the number

of institutions with a specific human rights mandate, including not only national human rights commissions, but also human rights ombudsman institutions, or a hybrid mix of the two. This makes the field very dynamic because the full mandate of an ombudsman now also entails not only a reactive investigation of complaints but also a proactive protection of rights, where the ombudsman's office is involved in *ex officio* investigations, studies, public awareness campaigns and sometimes even lobbying.

Of particular interest here are specialized ombudsman institutions for the protection of minority communities. The European Commission Against Racism and Intolerance (ECRI) recommended that states establish specialized bodies (in 1997) and enact legislation (in 2002) to combat racism and racial discrimination. That obligation is mirrored in two EU Non-Discrimination Directives from 2000. The new EU Constitution enumerates respect of minorities as a foundational value for the EU. In Europe, however, there are only two countries with specialized ombudspersons in the area of the protection of minorities, namely Hungary and Finland. Sweden has an Ombudsman against Ethnic Discrimination; Germany has established a Commissioner for Matters Related to Repatriates and National Minorities at the federal level and, in the state of Schleswig-Holstein, a Commissioner of the Minister President for Minority Affairs. Other countries, including Belgium, Denmark, the Netherlands, Norway and the United Kingdom have specialized bodies for combating racism or ethnic discrimination, not based directly on an ombudsman model, but with some similar functions. In some of these countries these discrimination bodies are developing their mandate so as to be able to accept individual complaints.

A specialist mandate prominently featuring minority protection can be created in various ways. Options include the creation of a separate thematic institution, establishing a minority issues department or focus group within a more general institution, or appointing a responsible deputy ombudsman or special officer, again, within a more general institution. The potential usefulness of such structures in the field of minority protection, particularly in states going through, or having recently been through, the process of democratization, is not really in question. Nevertheless, while there is a general trend towards specialization of institutions across all thematic areas, the pros and cons of such an approach are often disputed. For a number of reasons, including financial factors, administrative and resource burdens, and the importance of the maintenance of institutional identity, having one strong general ombudsman is the preferred approach of many states. In such a case, and given the importance of minority issues to both the minority and the majority communities in a state, the appointment of an officer or establishment of a specialized department in the field of minority protection can only be welcomed.

Although in this Guide the term 'specialized minority ombudsman' is often referred to, this should be interpreted to also cover a specialized officer, department or deputy ombudsman within a general ombudsman institution as is appropriate.

Definition of 'minority'

When deciding upon the structure of an institution, each country or region must also determine that institution's mandate. There have been many attempts by international organizations to agree on a definition of 'minority'. While there is broad agreement on various essential components of such a definition, such as that the group has separate characteristics and is non-dominant, it has been difficult thus far to reach final agreement between states. Neither the CoE Framework Convention for the Protection of National Minorities (FCNM) or the UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities contains a definition. In comparison, the Commonwealth of Independent States (CIS) Convention on the Protection of the Rights of Persons belonging to National Minorities does include a definition in Article 1, albeit without reference to certain characteristics such as being a numerical minority or having a subjective intention to maintain a separate identity.

Although recognition of a group by the state naturally has practical implications for the actual enjoyment of rights, the UN Human Rights Committee's General Comment on Article 27 of the ICCPR provides that "the existence of an ethnic, religious or linguistic minority in a given state party does not depend upon a decision by that state party but requires to be established by objective criteria."

In a few European states it will be necessary to also consider the special needs of indigenous people. They have many of the same characteristics as ethnic minorities but they have additional distinctive features relating to their lifestyle and relationship to the land.

An important principle is enunciated in Article 3.1 of the FCNM: "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights, which are connected with this choice." In other words, not all people wish to be labelled as belonging to a minority community and this preference must be respected. At the same time, however, an individual's subjective will to be considered a member of a minority group should be matched with objective characteristics of the group such as language, religion or heritage.

Consequently, taking into account the purpose of the minority ombudsman institution, a broad interpretation of who should be offered protection as national or ethnic, religious and linguistic minorities is appropriate.

The Guide to Good Practice

According to the legal and administrative traditions of the countries in which they are set up, a specialized minority ombudsman may take different forms. However, that should not diminish its role in advancing minority standards. Whatever form the ombudsman institution finally takes, it remains true that certain basic criteria must be met to ensure that the institution can function well and fairly, maintain its independence and always demand respect from society. In addition, meeting minimum criteria ensures that the institution will comply with relevant international standards, most importantly the Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights ("Paris Principles").

Much of the research for the Guide is based on a review of relevant pieces of legislation establishing ombudsman institutions or similar institutions in many different jurisdictions as well as their operational regulations, combined with visits to institutions, or discussions with staff of institutions. General reference to international standards, including the Paris Principles, is therefore supplemented by references to national legislation concerning ombudspersons in order to reveal the diversity of approaches in this field.

This Guide is structured into three parts:

1. Mandate, Powers and Functions;
2. Establishment and Foundational Criteria; and
3. Operations and Organization.

Each part consists of a number of key points or statements, followed by discussion and analysis, giving alternatives or discussing suitable solutions reached in practice by institutions. These key points are summarized in an Overview at the beginning of the Guide. Part IV of the Guide contains useful resources, including literature, websites and legal documents.

This Guide does not set out the scope or content of minority rights as such. Instead, its purpose is to focus on the implementation of such rights by ombudsman and similar institutions. However, Part IV of the Guide contains a selected list of excellent sources of information on minority rights.

This Guide does not attempt to provide set answers or even 'best' practice, but rather, it represents examples of good practice and experience from various countries. It could be seen as a collection of the wealth of more or less essential 'pre-conditions' for the proper functioning of an office.

With so many challenging and sensitive topics facing an ombudsman office, often in situations where an actual breach of law may not be clear but where nevertheless there has been some form of injustice, it is not possible to cover in a single publication the multitude of relevant issues. Given that the Guide deals with the role of ombudsman institutions in minority protection, general minimum standards for parliamentary ombudspersons are not covered in depth. However, in terms of establishment, strategy and operation, the Guide seeks to collect examples of good practice observed from various countries, and set this out in a useful format. Certain features discussed are relevant to all ombudsperson institutions, and although many points are more specifically relevant to specialist minority institutions, the majority of criteria discussed would certainly apply to both specialist institutions and specialist structures within general institutions.

It is hoped that the Guide can spark discussion and consideration for those states or regions considering such an institution, and provide a training and development tool for already-existing institutions wishing to strengthen their capacities in the minority issues area.

The term 'ombudsman' is used interchangeably with the term 'ombudsperson' and no implication of gender is intended in the use of these terms.

OVERVIEW

THE MANDATE, FUNCTIONS AND POWERS OF MINORITY OMBUDSMAN INSTITUTIONS

Individual complaints and investigations

- *The minority ombudsman has the power to investigate and determine individual complaints (including complaints brought by groups of individuals or organizations).*
- *Investigations by the ombudsman should extend to all realms of public life.*
- *The ombudsman's competence should be limited temporis.*
- *Victims as well as organizations representing classes of victims should have the right to complain to the specialized minority ombudsman.*
- *Access to the ombudsman institution should be free of charge.*
- *Procedures should be informal with easy accessibility (including local offices).*
- *Procedures should have a non-judicial, non-adversarial character.*
- *Proceedings should be confidential (if desired by complainant).*
- *Regulations must be in place for cases that raise a conflict of interest.*
- *Mediation should be used by ombudsman institutions.*

A wider mandate: own-initiative investigations and studies

- *The ombudsman institution should have the power to start ex officio (own-initiative) strategic investigations where such are considered justified and to conduct studies in fields where structural problems seem to occur.*

The ombudsman and the judiciary: participation in the litigation process

- *The ombudsman institution may have the power to initiate or pursue legal action in the courts on behalf of the individual, including*
 - *intervention/taking over individual claims*
 - *initiation of class action lawsuits*
 - *providing legal aid*
 - *providing expert opinions*
 - *submission of amicus curiae briefs.*
- *The minority ombudsman may have the power to challenge laws or policies in the courts (power to bring cases before constitutional courts, or 'regular' courts in those jurisdictions with no special constitutional courts).*
- *The ombudsman should not have the power to interfere in judicial proceedings, except to review or monitor court proceedings for procedures contrary to international human rights standards.*

Advancing domestic standards: the ombudsman's impact on legislation

- *The ombudsman institution should channel its expertise and information as much as possible to the policy-making process.*
- *The minority ombudsman may have the power to:*
 - *monitor existing laws and policies with respect to minority rights and to recommend amendments or any other changes*

- *express opinion on all new legislative drafts and policies that are related to minority issues*
- *initiate new laws and policies concerning minority rights*
- *review all other laws which could have a special impact on minorities.*
- *The ombudsman should undertake periodical audits of legislative provisions affecting minority rights.*
- *The ombudsman should draw on higher international standards, and have the duty to promote ratification and implementation of international instruments.*
- *The ombudsman should give proposals for new legislation or legislative amendments.*
- *The ombudsman should make comments on governmental and parliamentary legislative initiatives.*
- *The ombudsman should be able to criticize or comment on legislation that has been adopted.*
- *The ombudsman should help to develop higher legal standards and advance their interpretation.*

From legislation to action: encouraging governmental programming

- *The ombudsman should be involved in a programme-type approach to the implementation of minority rights.*
- *The ombudsman can offer advice on governmental action programmes and policy, and may be involved in training and liaising with relevant actors to improve practices.*
- *The ombudsman should have a role in monitoring progress of governmental action programmes and policy.*
- *The ombudsman should be involved in evaluating programmes and projects supporting minorities.*
- *The minority ombudsman should promote, initiate and support policy research helping the creation and implementation of policies relating to minority rights.*
- *The minority ombudsman may facilitate the establishment of and promote networks of minority organizations.*
- *The minority ombudsman may work in a liaison function to promote contact between minority organizations, public bodies, branches of government, non-public sector organizations, and between each of these categories of organizations and bodies.*
- *The ombudsman can use its reports to provide feedback on laws, policies and practices, and to signal the necessity of change in a systematic manner.*

Promotion and education

- *The minority ombudsman should:*
 - *develop good practice guides in the field of implementation of minority rights*
 - *develop or promote training and teaching of minority rights*
 - *develop and promote anti-racism, anti-xenophobia and pro-tolerance campaigns in cooperation with the media*
 - *be involved with promotional activities and education.*

FOUNDATIONAL CRITERIA FOR ESTABLISHMENT

Political independence

- *An ombudsman must be independent from executive intervention.*

Legislative establishment

- *Establishment of the institution should be able to be traced back to an Act of legislation and not an executive decision.*
- *It is advisable that the establishment of the institution of minority ombudsman is enshrined in the Constitution so that its position is secured.*
- *It is commendable that minority ombudsman institutions are also established at sub-state levels if the corresponding level of government has competences that are specifically relevant for minorities.*

The Act of legislation establishing the institution

- *The Act of legislation establishing the institution should specify as a minimum:*
 - *the mandate, functions and powers of the office*
 - *the requirements to be fulfilled by the persons to be appointed as ombudsperson(s)*
 - *the exact appointment procedure to be followed*
 - *the status of the ombudsperson*
 - *the level of accountability to parliament*
 - *the immunities of the ombudsperson*
 - *the term of office*
 - *rules concerning his/her dismissal*
 - *a list of incompatible employment or positions*
 - *procedures for a conflict of interest in a specific case*
 - *rules concerning remuneration*
 - *the budgetary autonomy*
 - *the competence to appoint staff.*

Procedures for appointment of the ombudsperson

- *The Act of legislation establishing the institution should set out a clear and specific appointment procedure for the ombudsperson.*

Minority involvement in the appointment process

- *The Act of legislation should specify the way in which, and the extent to which, minority communities are involved with the appointment process.*

Personal requirements/criteria for appointment

- *The Act of legislation should determine the criteria for appointment of the ombudsperson(s). These will tend to include a nationality requirement, considerations of expertise and experience, as well as of representation as regards the ethnic diversity of the country for the institution's staff.*

Employment conditions – remuneration, tenure and dismissal

- *Clear regulations as to positions incompatible with that of ombudsperson, and the remuneration of the ombudsperson are essential to guarantee the institution's independence.*
- *A fixed term of office not linked to the term of office of parliament is the preferred option for tenure.*

- *The Act of legislation establishing the institution should identify clearly the conditions for and procedure of dismissal of the ombudsperson prior to the end of term. It is crucial that an exhaustive list of grounds for dismissal is specified.*

Immunities

- *The legislative Act should provide for immunities for the ombudsperson and persons acting on his/her behalf.*

Appointment of deputy ombudspersons and staff

- *The Act of legislation should set out the procedures for appointment of deputy ombudspersons and staff of the institution.*

KEY ORGANIZATIONAL AND OPERATIONAL ISSUES

Independence

- *The ombudsman must be, and be perceived to be, independent.*
- *Having staff from minority communities can enhance the effectiveness of the institution.*
- *Representation can also be ensured by having sub-offices in regions where there are significant numbers of minorities.*
- *The staff composition should be representative of the diversity in society.*
- *The ombudsman office must offer a multi-disciplinary approach.*
- *The ombudsman office needs a recruitment strategy to appoint staff with the requisite skills, including being proactive in relation to persons from minority communities.*
- *Links with organizations and universities should be maintained to aid with staff training.*
- *Exchanges of staff from relevant intergovernmental organizations, ombudsman institutions or universities is possible, however, conflicts of interest must be considered.*
- *The ombudsman institution must enjoy financial independence.*
- *The ombudsman institution must follow the contracting rules that apply under domestic law to public bodies.*
- *A contract should not be awarded where a conflict of interest exists.*

Integrity

- *A fair appointment and promotion policy will assist in maintaining the integrity of the institution.*

Moral Standing

- *The minority ombudsman institution needs the trust of minority communities and the wider majority community if it is to be effective.*

Accountability and transparency

- *The ombudsman institution must be fully accountable and adhere to its formal reporting requirements.*
- *The annual report is a good tool to account to parliament and promote the institution.*

- *The outcomes of investigations should be made known to the body being investigated and to the public.*
- *The ombudsman's operating procedures and regulations, particularly for complaint investigations, should be made public.*
- *Reports and the outcomes of investigations should be made public and the ombudsman should have a media and dissemination policy, including dissemination to minority media.*
- *The ombudsman must ensure access to the institution in terms of information (website, language, telephone etc.) and also geographical/physical access.*

Confidentiality/data protection issues

- *Minority issues can be sensitive in nature and the ombudsman must have a policy on confidentiality and privacy of personal data.*

Efficiency

- *Complaint and correspondence tracking mechanisms should be put in place.*
- *Financial monitoring must be undertaken to ensure maximum efficiency.*

Language use

- *The ombudsman should have a language policy for internal and external communication.*
- *The language policy of the minority ombudsman institution should allow persons to use the ombudsman's services in a minority language or with free services of an interpreter. This includes to approach the institution and to receive replies in a minority language.*

Management of relationships with analogous domestic bodies

- *The ombudsman should maintain close links with other bodies or mechanisms available to assist with minority protection, however, the different jurisdiction and mandate of each body or organization must also be heeded.*

Bringing international standards to bear

- *The ombudsman must keep abreast of developments in international standards and law in the minority protection field.*
- *The ombudsman should establish and maintain a library of relevant legal materials and information about domestic developments.*

Training

- *There should be a training plan for staff of the ombudsman so that they stay abreast of national and international developments in minority protection.*

Dissemination of legal standards

- *The ombudsman should be involved in the dissemination of information about national and international developments in minority protection to relevant government departments, organizations, schools and the media.*

Cooperation with similar institutions in other jurisdictions, and international agencies and institutions

- *The ombudsman should identify minority-related international monitoring bodies or mechanisms, and international NGOs active in the minority protection field.*



PART I



**THE MANDATE, FUNCTIONS AND POWERS
OF MINORITY OMBUDSMAN INSTITUTIONS – ADVANCING
DOMESTIC STANDARDS AND DEVELOPING PROGRAMME
STRATEGIES FOR THE FUTURE**

1 Introduction: The Scope of Enforcement Functions

The functions and responsibilities enumerated in the ECRI Recommendation on Specialized Bodies to Combat Racism, as well as the UN Paris Principles Relating to the Status of National Institutions, can be summarized as follows: (1) policy-making and legislative functions; (2) enforcement or implementation functions; and (3) promotional and educative functions.

The clusters of functions attributed to minority ombudsman institutions highlight that the aim of these institutions extends beyond simple individual-level implementation of minority rights to a very wide understanding of enforcement and implementation. According to this approach a more proactive strategy is needed, rather than only reactive enforcement in individual cases of violation, in order to achieve a relatively full enforcement of these rights. The functions suggest that awareness-raising in society in relation to the problem of racism and its moral unacceptability, and of recognition and tolerance towards national, ethnic or racial differences, is part of the enforcement process, as is re-educating the public and changing prejudiced mind-sets. They also suggest that discrimination and violation of other minority rights often penetrate the structures of the society, and their systemic form cannot be addressed by enforcement only on the individual level, but rather that careful assessment and system-wide remedies are required. Finally, the function to assess and evaluate relevant legislation and policy, and to suggest amendments and new policy, demonstrate that it is not enough to address the issue of racial discrimination and other violations of minority rights in the different fields where they may occur, but that permanent coordination, supervision and evaluation of the efficiency of the overall minority policy is required. The special focus and expertise of the minority ombudsman institution allows for this to be undertaken appropriately.

In the ECRI Recommendations, enforcement functions are aimed at the enforcement of rights of individual victims and at the strategic enforcement of rights of relevant minority groups. The Recommendation includes functions such as providing assistance and/or legal aid to victims if such aid is provided for by the national legislation, support for or eventually bringing cases before the judiciary, hearing cases and seeking extrajudicial settlements through conciliation; all of these functions being supported by appropriate powers to obtain evidence, and all relevant information and documents from the concerned parties.

What makes the ombudsman institution unique, besides its compliance with the principles of independence and its focus on public life, is its powers and instruments. The ombudsman has the power to investigate individual complaints of aggrieved citizens and has strategic powers to conduct investigations on its own initiative.

Individual Complaints and Investigations 2

- *The minority ombudsman has the power to investigate and determine individual complaints (including complaints brought by groups of individuals or organizations).*

The ombudsman is an institution for the achievement of justice and equity. It can criticize illegal behavior, but a breach of law is not strictly necessary: unreasonable or unjust behavior is a sufficient ground for action. Even if a decision is procedurally correct, it can still be considered unreasonable, unjust or inhumane by the ombudsman if it is unfair in its effect. The ombudsman will consider the quality of the decision made by the authority in question. Thus he or she not only provides for procedural justice but also for substantive justice.

Upon finding some injustice, the means of redress available to the ombudsman are characteristic to its role. Its approach is not supposed to be adversarial: persuasion, conciliation or mediation are the means which are available to the ombudsman. The classical institution has no effective power to enforce its opinion; however, recommendations can be made, and publicity can be used in cases of non-compliance. That recommendations are non-binding can be seen as a strength in that a power to make binding decisions would need to be reviewable by some other state body, whereas it is the role of the ombudsman to be the overseer that justice is done. The means available for ombudspersons to combat violations of rights show that the institution is to have an educational role even in the case of solving individual complaints. The aim is not necessarily only to settle the particular issue in question, but to make the 'respondent' learn from the mistake, to understand the inhumanity, unjustness or irrationality of the provision or criterion applied, or of the practice used. The recommendations of the ombudsman will thus aim on the one hand for the resolution of grievances in the short term, on the other hand to the change of practices in the long term.

- *Investigations by the ombudsman should extend to all realms of public life.*

The scope of action of the minority ombudsman institution should extend beyond public administration to public life in general including the private sector. This extension to the mandate of a parliamentary ombudsman can be justified by the aim of fighting discrimination, by the special vulnerability of members of minorities, and by the fact that they will face very similar problems and types of discrimination coming from private actors in their public life. Although the state is in most cases the largest employer and service provider, meaning that covering the arbitrary and unjust activities of the public administration will cover a large part of the violation of rights of members of minorities, it will nevertheless still exclude a large part of very similar violations committed by non-state actors. If the aim of the ombudsman is the advancement of equality, and the fight against racial or ethnic origin discrimination, it is very difficult to justify why this would imply only investigation of

abuses committed by state actors. There is also an efficiency argument in favor of extending the scope of action of the minority ombudsman to private actors. Investigation and collection of evidence for discrimination and violations of minority rights cases requires special skills and know-how. However this know-how is similar for all cases of discrimination, regardless of whether it has been committed by local government or a privately-owned company. Centralizing this expertise in dealing at a non-judicial level with discrimination cases will advance more efficient handling of these problems. The minority ombudsman seems to be one type of ombudsman institution for which the extension of the scope of action beyond public administration is justified by the nature of the specialization: the protection of rights of national, ethnic or racial minorities and the fight against discrimination.

- *The ombudsman's competence should be limited temporis.*

In order to ensure consistency and avoid an extensive workload it would be necessary to limit the ombudsperson's competence temporis. It will be difficult to argue that the specialized minority ombudsperson should examine violations that occurred prior to the establishment of the institution. Similarly, the time limit for submitting complaints should be defined. In any event, it should not be longer than two years after the event that is the subject of the complaint.

- *Victims as well as organizations representing classes of victims should have the right to complain to the specialized minority ombudsman.*

Any natural or legal person should be able to complain to the specialized minority ombudsman. However experience shows that often there is an absence of complaints from the most vulnerable sectors of the population. This may be due to a variety of reasons ranging from a lack of understanding of the system, or a lack of confidence in the specialized minority ombudsman's ability to find effective solutions to their concerns, through to reasons connected to the nature of minority rights violations. Understanding the nature of this problem in each country is crucial. The specialized minority ombudsman should therefore place considerable emphasis on building the confidence of both the public and the authorities that it is an independent, competent and impartial 'watchdog' that deals with implementation of non-discrimination and the protection of minority rights.

Violations of minority rights are often due to structural problems. Due to its extensive powers, the specialized minority ombudsman will promote a structural approach. Class action is considered a legal instrument capable of making up for some of the structural problems in society. Class action makes court procedures less expensive, it provides for moral support of the complainant through creating a class, and it sheds light on the size and importance of the issues complained about. However, the introduction of class action requires major changes in legal systems and its introduction has been treated very cautiously in Europe. Meanwhile the minority ombudsman institution, especially if provided with the tools to give legal support or assistance in court cases, or to eventually bring cases before court, takes on some of the major advantages of class action: it makes up for the financial difficulties some litigants may have in bringing a claim; provides supportive solidarity and encourages complainants to come forward with their complaint; remedies to some extent the inequality of bargaining power between the complainant and the respondent; and provides collective remedies.

Civil society organizations, including minority organizations, should be entitled to submit complaints on behalf of individuals that have alleged maladministration and should be able to draw attention to more general concerns. In any event, the specialized minority ombudsperson should have the power to examine the case *ex officio*. In most cases an *ex officio* investigation will occur in situations of general

concern. These would require more general investigations and demand sufficient resources to ensure that high quality work can be undertaken.

- *Access to the ombudsman institution should be free of charge.*
- *Procedures should be informal with easy accessibility (including local offices).*
- *Procedures should have a non-judicial, non-adversarial character.*
- *Proceedings should be confidential (if desired by complainant).*

Easy access is one of the main features of the institution. Complaints are investigated free of charge. In most cases there is no formal requirement for the method of making the complaint, meaning that the ombudsman will sometimes help in formulating the complaint itself. Complaints can be taken in writing, electronically, by phone or can even be made personally in the complaint offices of the institution. In this regard it is often crucial that the institution establishes regional offices outside of the capital city, and arranges for 'open days', allowing the public to visit the office. Assistance from lawyers is not necessary for making a complaint to the ombudsman.

The professional methods of investigation, methods of persuasion and conciliation, and the threat of publicity can in many cases provide an alternative to the protracted, costly, adversarial procedures and to the mostly individualized remedies provided by the judicial system. In general it takes a much shorter time de facto for the ombudsman to resolve complaints than is the case for court procedures. Also the procedures conducted by the ombudsman are much less adversarial than court proceedings: first in the sense of focusing on investigation, second in the sense that the aim of the institution is not to find and punish the wrongdoer, but, where fault is found, to make him or her understand the incorrectness of the action in question, to persuade this person that the action complained of resulted in treating the victim inhumanly or unfairly, and thus that a remedy is due. Persuasion also has the advantage of preventing the wrongdoer from committing the same action repeatedly.

These procedures will be especially advantageous for those who have a lower level of education and/or different language skills than the majority population, and perhaps cannot formulate their complaint, who cannot afford the costs of a judicial procedure, or who lack the self-confidence to raise their voice. All of these factors – poverty, lower level of education, lower self-confidence – impact members of minorities disproportionately. Thus access of groups such as the Roma in Central and Eastern Europe to ombudsman institutions will generally improve their chances of making complaints with respect to minority rights.

- *Regulations must be in place for cases that raise a conflict of interest.*

A regulation should be in place for procedures when there is a conflict of interest in a specific case since this could raise doubts about the impartiality of the ombudsperson. A possible avenue could be to use an alternative investigative officer, possibly a deputy ombudsperson.

- *Mediation should be used by ombudsman institutions.*

Mediation is considered one of the most important tools available both to a general ombudsman and to a specialized minority ombudsman institution in solving human rights and minority rights related cases. It is an alternative method of dispute resolution, which offers a relatively non-legalistic settlement of a complaint. Mediation seems to be a very good tool for addressing issues of discrimination or other violations of minority rights because it avoids the adversarial procedures and formalism

of the courts, avoids publicity or blame and yet reaches settlement. It can provide satisfaction for the victim and also has the advantage of making the wrongdoer understand the unfair nature of the challenged action, thus preventing repetition of the act.

Mediation can often bring an easy remedy for the violation of the human dignity of the victims. Sometimes apologies or recognition of fault is what victims seek, and the ombudsman will be able to persuade the 'respondent' to provide this. The emphasis of the ombudsman's procedure will be more on compensating and making whole the victim, defining the problem and preventing its future occurrence, than on blaming the wrongdoer.

However, it should be taken into consideration that mediation is not a solution for all cases of violation of minority rights. Sometimes more adversarial methods can be appropriate. Reservations concerning mediation can be raised in relation to the message the mediation method conveys towards the public. Conciliation "treats racism as an individual, personal act and overlooks the institutional racism which impacts profoundly on the society" (MacEwan, 1997:21). Indeed, bringing minority cases down to a confidential person-to-person conciliation process conveys no message to society, it lacks the preventive educative role that investigations which are made public, or public court procedures, may have, and instead it attempts to solve the problem locally and silently. Its advantage is the satisfaction of the individual complainant and the constructive solution of the local issue. This criticism can best be avoided by splitting the focus of the institution between individual conciliation and other methods of enforcement.

A Wider Mandate: Own-Initiative Investigations and Studies 3

- *The ombudsman institution should have the power to start ex officio (own-initiative) strategic investigations where such are considered justified, and to conduct studies in fields where structural problems seem to occur.*

Strategic powers of the minority ombudsman institution are justified by the weaknesses of individual remedies. Individual enforcement can generally only produce changes in the behavior of individual perpetrators. In addition, complaints normally vary in incidence and significance. Many people do not know that they have suffered discrimination or are reluctant to complain because they do not want to relive the humiliation, which they have suffered. Even if they know how to make a complaint, they may have no confidence in the effectiveness of the complaint procedure and the redresses available. Some complaints are trivial or misconceived. Although the law must provide for effective individual remedies, it is also essential that the law can be implemented without being dependent upon the making of an individual complaint.

The strategic powers of the ombudsman will allow the institution to intervene when and where it deems necessary in the public interest. The ombudsman has the power to initiate formal investigations into specific institutions, bodies or into some general aspect of public life (e.g. minority education, discriminatory practices used by employment agencies, political representation of minorities). Its targets can be chosen based on the expertise of the staff and eventually on the signals coming from individual complaints, so that the structural investigations can have long-term importance. Through its strategic investigations, the minority ombudsman points to the extent and importance of the problem of violation of minority rights. Dissemination of the findings of such investigations and studies is also of paramount importance.

The Ombudsman and the Judiciary: Participation in Court Processes

The *locus standi* of the ombudsperson before the courts should be carefully examined. Without interfering with the activities of the judicial bodies, the ombudsperson protects the rights, interests and specific circumstances of individuals in relation to the actions and conduct of public authorities. It is important to understand the respective roles and responsibilities of the national institution and the judiciary. This would include a respect for the separation of powers and a clear demarcation of roles and responsibilities of these institutions.

- *The ombudsperson institution may have the power to initiate or pursue legal action in the courts on behalf of the individual, including*
 - *intervention/taking over individual claims*
 - *initiation of class action lawsuits*
 - *providing legal aid*
 - *providing expert opinions*
 - *submission of amicus curiae briefs.*

There is considerable variation between different specialized bodies as to what they are allowed to do when dealing with individual complaints. Some specialized bodies remain closer to the classical ombudsman model in that they only have the power to make recommendations, and their recommendations have no binding force. At this end of the spectrum, the specialized institutions remain completely independent of the courts; they provide an alternative legal remedy, a soft one, alongside the judicial remedies. The Hungarian Minority Commissioner, for example, falls under this category, however there are strong arguments favouring the extension of its powers. Another possibility is that minority ombudspersons have the power to bring cases before the courts, or at least to participate in preparing for important discrimination cases. Their opinion on the case may then be considered as expert opinion, and taken as evidence in the proceedings. The majority of specialized bodies fall under this category, for example, the Swedish Ombudsman against Ethnic Discrimination, the United Kingdom Commission for Racial Equality and the Equal Treatment Commission in the Netherlands.

This does not mean however that the minority ombudsperson will bring all cases before the courts. Usually only those cases are considered for support and legal aid in court procedures, which bring up some matter of principle, and whose appropriate presentation and success will result in the development of the legal approach towards racial or ethnic discrimination. Sometimes powers of adjudication can also be conferred to the minority ombudsman-type institution, however these decisions can always be appealed before higher courts. Choosing one model over the other depends on the legal context of the given country and the preferences of the legislature. What follows necessarily from the objectives and advantages of this type of institution, however, is its power to provide its expertise not only in providing alternative, extrajudicial solutions for cases of racial discrimination and other violations of minority rights, but also in preparing and bringing cases successfully before courts. This is important not only from the point of view of the particular cases at issue, but also from the point of view of the advancement of judicial practice, and the education and further development of sensitivity of the judiciary on these matters.

It must also be noted, however, that the possibility for the specialized minority ombudsperson institution to take cases to court on behalf of victims of discrimination and/or violation of minority rights may diminish its role as an impartial intermediary.

- *The minority ombudsman may have the power to challenge laws or policies in the courts (power to bring cases before constitutional courts, or ‘regular’ courts in those jurisdictions with no special constitutional courts).*

According to principle 3(e) of the ECRI Recommendation it is necessary for the ombudsman “subject to the legal framework of the country concerned, to have recourse to the courts or other judicial authorities as appropriate if and when necessary”. However, the July 2003 Report of the Parliamentary Assembly of the Council of Europe Committee on Legal Affairs regarding the institution of ombudsman states “... [o]mbudsmen’s access to administrative and constitutional courts should be limited to applications for interpretative judgments on legal questions relating to the mandate or particular investigations, unless representing an individual complainant with no direct access to such courts. It is preferable, however, that individuals with otherwise sufficient *locus standi* should be able to apply directly to such courts.”

In Albania, Austria, Hungary, Moldova, Poland, Portugal, Russia and Ukraine, for example, the Ombudsperson may apply to the Constitutional Court for declarations of illegality or unconstitutionality, interpretations or invalidation. In Slovenia the Ombudsperson can also address the Constitutional Court with proposals for the assessment of the constitutionality of regulations without prior establishment of his/her legal interest by the Constitutional Court.

- *The ombudsman should not have the power to interfere in judicial proceedings, except to review or monitor court proceedings for procedures contrary to international human rights standards.*

The ombudsman may have the power to review and monitor court decisions and processes, but if so, this should be limited to an investigation of complaints concerning excessive delays in proceedings (criminal, civil or administrative) contrary to international human rights standards (for example, Article 6 of the European Convention of Human Rights). The Report of the Parliamentary Assembly of the Council of Europe Committee on Legal Affairs states that “[o]mbudsmen should have at most strictly limited powers of supervision over the courts. If circumstances require any such role, it should be confined to ensuring the procedural efficiency and administrative propriety of the judicial system; in consequence, the ability to represent individuals (unless there is no individual right of access to a particular court), initiate or intervene in proceedings, or reopen cases should be excluded”.

5 Advancing Domestic Standards: The Ombudsman's Impact on Legislation

- *The ombudsman institution should channel its expertise and information as much as possible to the policy-making process.*

Through summarizing the concerns of individuals and looking at the general trends as shown by individual complaints and general own-initiative investigations, the minority ombudsman institution will have the most comprehensive view of the workings of the existent minority policy of a given country. In view of the relatively recent development of minority rights, and the lack of consensus about their meaning even at the international level, the institution will play an active part in finding adequate solutions for the implementation of these rights at the national level. The power of the institution to refer beyond national law to universal standards will give the minority ombudsman an even better understanding of the directions for necessary change in protection of minority rights at the national level.

Furthermore, unlike courts or government departments, minority ombudsman institutions have the capacity to link individual complaints to inadequacies of policy and therefore have the possibility to make recommendations regarding legislation and policy to government departments and the legislative power. Thus they are in the exceptional position to see the workings of the relevant existing laws and policies and also to recommend their amendment if necessary, thus channeling information between the enforcement of legislation and other state powers.

In the 1997 ECRI Recommendation, policy-making and legislative functions include tasks such as monitoring the content and efficiency of relevant existent legislation and governmental policies, and making recommendations concerning their amendment or modification, as well as counseling the legislative and executive branches of government concerning improvement of legislation and policies in the field, or concerning the making of new laws and policies.

If the policy-making and legislative role of the minority ombudsman institution is recognized, there are cases in which the executive model of minority ombudsman comes to be favored as being more efficient in the policy-making process. In the case of an executive ombudsman, the relevant state department recognizes the role this institution can play not only in handling individual complaints but also in summarizing issues arising in complaints or in investigations undertaken on its own initiative, in making recommendations concerning the development of policies and legislation in the field, and also in the promotional work needed for efficient enforcement of minority rights. The advantage of the executive ombudsman is its place within the executive, meaning that it has the necessary leverage, while also remaining outside executive control. As such, it can deal with rights issues in a technocratic and expert way, thus separating them from the political realm.

Annual reports of the ombudsman institution can make recommendations concerning legislation and policy. In this way, the institution can provide feedback on existing laws, policies and practices, and give recommendations for amendments and new legislation, or highlight issues that need addressing.

Variations may occur between different national cases as to how much weight is given to the policy-relevant recommendations of the minority ombudsman. A fre-

quently voiced problem is that the recommendations of such bodies are not always taken into consideration, or not even placed on the agenda of discussions. This could be prevented by making clear reference in the Act of establishment of the institution to the duty of parliament and relevant governmental departments to at least place the policy and legislative recommendations of the ombudsman on their agenda once the recommendations have been formulated

- *The minority ombudsman may have the power to:*
 - *monitor existing laws and policies with respect to minority rights and to recommend amendments or any other changes*
 - *express opinion on all new legislative drafts and policies that are related to minority issues*
 - *initiate new laws and policies concerning minority rights*
 - *review all other laws which could have a special impact on minorities.*

Whether there is a parliamentary or human rights ombudsman, or a specialist institution for minority issues, the institution should apply and insist on the implementation of minimum standards of minority protection. Whenever possible the ombudsman should also support development of the existing standards. The specialized minority ombudsperson should function as an 'engine of development of minority standards' or a 'service provider for minority rights'. Each institution needs to devise its own methods for effective enforcement and advancement of domestic minority standards, in particular depending on the country specific situation (and the ombudsman's relation to parliament, government and the courts).

There are different options available here. One extreme method could be giving the ombudsman a right of veto on legislation and policies strictly related to minority rights. Another option could be setting down strict consulting requirements, which could imply the obligation of the policymaker to involve the ombudsman into the process of policy-making. The weakest possibility is providing for a right of the ombudsman to express opinion. In all cases, the policymaker should clearly have the duty to inform the ombudsman about all policy drafts in a timely manner.

- *The ombudsman should undertake periodical audits of legislative provisions affecting minority rights.*

The minority ombudsperson should have the power to exercise 'the minority provision audit'. The 'minority provision audit' means the examination and checking of legislation by a professional 'auditor', external to the legislative-making power – in this case the ombudsperson. He/she has to ensure that standards and procedure are followed.

The 'auditing' function of the specialized minority ombudsperson should be consistent with the ombudsperson's overall mandate. In particular, it should involve the ombudsperson's assessment, opinion and recommendations on domestic standards that relate to minority rights. The purpose of the minority provision audit is to be able to pinpoint what is wrong with legislation and practice, and to indicate what steps should be taken to implement the necessary changes. It should be explicitly stated in the legal framework that the minority ombudsperson must not only guard legality, but also promote equity in the field of minority rights. The standards to be applied by the ombudsperson should clearly include not only the ones codified in national legislation but also international standards. Therefore, in order to exercise the auditing function properly, the specialized minority ombudsperson should identify the (minimum) domestic and international standards that should be applied in the particular state. Where possible, the specialized minority ombudsperson should also draw on higher standards that have become the custom and

common practice within the particular country itself, and on experiences of best practice adopted elsewhere. As regards domestic standards, the specialized minority ombudsperson should evaluate laws currently in force from the point of view of whether they take into consideration the interests of minorities. Apart from the constitution, which would be a crucial source of domestic standards, the specialized minority ombudsperson should identify other applicable legislation and regulations. Once the ombudsperson has identified the applicable domestic standards, he/she should assess to what extent minority rights are protected. Moreover the ombudsperson should not only apply relevant international standards, but evaluate whether the state in question has incorporated relevant international standards into its domestic legislation.

Insofar as existing minority protection standards are part of human rights, the starting point for the evaluation should be the compliance by states with human rights obligations, in particular, freedom from discrimination. Many European states have recently adopted legislation incorporating the EU Race Equality Directive (43/2000) that prohibits both direct and indirect discrimination. Adoption of such legislation is very useful from the minority protection point of view. Indeed, through good anti-discrimination legislation and practice, a high level of protection of minorities can be achieved.

However, it should be recalled that the aim of combating discrimination is the prevention of any action that denies individuals or groups of people the equality of treatment that they may wish. The aim of protection of minorities, however, is to protect non-dominant groups that, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority population. Therefore in addition to anti-discrimination legislation, there is a need for legislation that incorporates relevant international standards granting such 'different treatment' i.e. protecting minority rights. Normally, the examination of the implementation of standards is a more difficult task than one of mere assessment.

Regarding the evaluation of the implementation of standards, the practice of the Hungarian Minority Ombudsman is a useful example. He undertook, for example in 1998, a comprehensive survey of the education of minorities with an aim to investigate whether the legal regulation of education was in harmony with the regulations defined in the Constitution and in the Act defining the rights of national and ethnic minorities. The investigation also sought to determine whether in the course of the application of the law, the rights of national and ethnic minorities were being enforced in accordance with the pertaining legal regulations. It was a separate objective within the survey to detect whether negative discrimination against minorities was being practised in the course of education.

Similarly in 2002, the Ukrainian Ombudsman, in order to begin to address the rights of the national minorities, made a comprehensive assessment of the particular situation of different national minority communities in six different parts of Ukraine. Under the supervision of the Ombudsman, experts compiled a report on the observance of the rights of national minorities. The final report was completed in December 2002 and presented to the Parliament of Ukraine in early 2003. It is to be used by the Office of the Ombudsman to improve its ability to address the problems faced by national minorities in Ukraine.

Finally it is important to note that both domestic legislation and practice should be subject to dynamic interpretation by the specialized minority ombudsperson. Thus, the auditing should be done periodically, e.g. every three to five years after the first assessment has been undertaken.

- *The ombudsman should draw on higher international standards, and have the duty to promote ratification and implementation of international instruments.*

The key instrument in this regard is the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Many states have also ratified the International Covenant on Civil and Political Rights (ICCPR), where Articles 2, 26 and 27 and the jurisprudence of the Human Rights Committee, as well as its General Comment on Article 27 of the ICCPR, have particular relevance, and there is the less well-known International Covenant on Economic, Social and Cultural Rights where Articles 2 and 13 are relevant.

There is now a growing body of evidence on how the Framework Convention for the Protection of National Minorities (FCNM) and other instruments of international law have been implemented; and the internet provides easy access to the views formed by the treaty monitoring bodies on how these standards have been and should be implemented.

The interpretative guidelines on education, language, participation and media (the Lund, Hague and Oslo Recommendations and the Media Guidelines developed under the auspices of the OSCE High Commissioner on National Minorities), have been highly influential, particularly in the interpretation of the FCNM.

On the European level, the 1992 European Charter for Regional or Minority Languages should also be a tool for the minority ombudsperson. The Language Charter provides for a 'personalized' framework in each state, aiming to preserve minority languages and provide concrete measures within the state for the benefit of the languages in question. The Charter seeks to ensure that minority languages can be used actively in public and private life.

In addition, the CoE European Commission against Racism and Intolerance has produced a wide range of country reports on all Council of Europe states as well as valuable analyses on thematic issues citing good practice. Furthermore, the EU Race Equality Directive (June 2000) has a particular significance for those states that are members of the EU or are applicants for membership, as this has become part of the "acquis communautaire" and all these states must comply with it.

Under Union law, member states are also bound by the EU Charter of Fundamental Rights. Although the EU Charter does not provide specifically for the rights of minorities, it does contain articles prohibiting discrimination based on membership

of a national minority (Art. II-21), and member states must respect cultural, religious and linguistic diversity (Art. II-22) and protect the rights of respect for private life (Art. II-7), freedom of religion (Art. II-10), freedom of expression (Art. II-11) and freedom of association (Art. II-12). Each of these protects various elements of the rights of persons belonging to minorities. It must also be noted that the new EU Constitution includes respect for minorities as a foundational value of the EU.

The work of the UN Working Group on Minorities over the last nine years has helped identify some best practices globally. It may be concluded that the existing international normative framework, which has steadily evolved, especially in Europe, during the last decade, provides relatively clear guiding principles for the full implementation of these standards via *inter alia* domestic mechanisms for human rights protection, e.g. the specialized minority ombudsperson.

- *The ombudsman should give proposals for new legislation or legislative amendments.*

According to the legislation of many European states, the ombudsperson institution is entitled to make proposals for improving legislation and regulations. The specialized minority ombudsperson should play a role in legislative and regulatory reforms and *proprio motu* make proposals with a view to assisting in the process of drafting new legislation. This is of particular importance since the international standards for the protection of minority rights have only recently been developed and in some instances governmental authorities may not be aware of minority rights issues. Indeed, the CoE Framework Convention for the Protection of National Minorities (FCNM), which entered into force in 1998, is the first ever legally binding multilateral instrument devoted to the protection of national minorities. The vast majority of European states have signed up to the Framework Convention. It is important to note that the FCNM is also open to non-Council of Europe states. The FCNM is not a directly applicable international instrument; therefore its respective provisions may not be invoked before the domestic courts. For the proper implementation of the Framework Convention it is instead necessary that member states adopt the requisite national legislation and appropriate governmental policies.

At present, it may be noted that very many countries have adopted legislation on national minorities. Some have single framework legislation on minorities; others are still in the process of drafting minority legislation. In many countries different minority-related issues are regulated by issuing specific thematic legislation instead of having a general law on minorities. For example states have either a particular law on minority education or specific minority-related provisions in general education laws. In addition, even if a country adopts a single framework law on minorities, it proves necessary to have specific provisions in other applicable legislation (media, elections, etc.). Whatever legislative technique respective countries choose, it is important to enact legislation which incorporates relevant international standards protecting minority rights to choice of identity, language use, education, public participation, and access to citizenship and the media.

In Albania, the Czech Republic, Finland, Georgia and Moldova, for example, the ombudspersons are generally entitled to make proposals for improving legislation or regulations.

Furthermore, the Law on Ombudsman in Croatia empowers the ombudsman to initiate changes in the laws regarding the protection of the rights proclaimed by the constitution and other laws. On the other hand, the Georgian Public Defender is authorized to submit proposals concerning the improvement of legislation to parliament in order to secure human rights and freedoms. The Ukrainian Ombudsman is entitled to facilitate the process of bringing the legislation of Ukraine on human and citizens' rights and freedoms into line with the Constitution of Ukraine and international standards in this area.

It therefore appears that existing legislation in many states provides the ombudsperson with the power to exercise this advisory function in the area of minority rights, being an integral part of human rights. In the states in which such a possibility does not exist, an extension of the ombudsperson's mandate in this respect should be considered.

In conclusion, it should also be noted that an additional function of the specialized minority ombudsperson is his/her involvement in the process of transformation and modernization of the state. States that are in the process of adopting and improving legislation as well as changing their practices may benefit from the assistance of the specialized minority ombudsperson. Experience shows that this type of flexible institution can have a positive impact on transitional democracy, particularly where there are radical changes to legislation.

- *The ombudsman should make comments on governmental and parliamentary legislative initiatives.*

The ombudsperson institution has traditionally had an institutional connection with parliament. Ombudspersons are usually appointed by parliament and are furthermore required to submit reports to this body. In addition to the connection to parliament, it is desirable that the specialized minority ombudsperson be engaged in dialogue with ministers on minority-related issues (e.g. education, culture, justice, etc.). Such a relationship would enable him/her to exercise influence in improving minority rights standards. The timely identification of human rights problems and situations involving minorities is also of utmost importance.

The power to advise parliament and the executive on human rights issues is also recognized in the Paris Principles, according to which a national institution should be granted the authority to "submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power...any legislative or administrative provisions...".

Certainly, the institutions with the power to conduct in-depth investigations of human rights violations or, in particular, minority rights issues, are well placed to comment on legislative inadequacies (as expressed either in draft legislation or legislation that is already in force). In particular, the ombudsperson institution, through the process of receiving individual complaints, is generally able to swiftly identify areas where these legislative inadequacies exist.

For example, Spain's parliament formed a Joint Committee of both houses of parliament to be in charge of relations with the ombudsperson. Furthermore, according to the legislation of many European states, the ombudsperson institution is given the active role of commenting on governmental and parliamentary initiatives.

The power of the Estonian Legal Chancellor to comment on general and parliamentary initiatives appears to be very wide. According to the 1999 Legal Chancellor Act, copies of all generally applicable legislation of the legislative and executive powers and of local governments, international agreements which have not yet entered into force, and all judgments of the Supreme Court which concern constitutional disputes and which have already entered into force shall be sent to the Legal Chancellor within ten days after their corresponding proclamation, passage, signature or entry into force.

The Russian Federal Law on the Commissioner for Human Rights provides that "the Commissioner shall facilitate restoration of violated rights, the improvement of legislation of the Russian Federation on human and citizens' rights and bringing it into accordance with universally recognised principles and norms of international law."

Finally, the Georgian Public Defender is authorized, after examination, to "submit proposals concerning the improvement of legislation to the Parliament in order to secure human rights and freedoms."

- *The ombudsman should be able to criticize or comment on legislation that has been adopted.*

The role of the specialized minority ombudsperson in advancing minority standards will not be fully effective if he/she is not able to criticize or comment on legislation that has been adopted. Usually it is both practically and politically easier to comment on draft law than law that is already in force. Some ombudsperson institutions develop special policy regarding the publicity of reports. Thus, they publish their reports only after allowing time for compliance with their recommendations. This is usually a good method in exercising an advisory role on (draft or adopted) legislation because it enables authorities to save face before the criticism reaches the public.

The vast majority of ombudsperson institutions are authorized to comment on legislation (i.e. almost all of those authorized to comment on draft laws) and they should exercise that function properly, whenever necessary.

Some commentators and ombudspersons argue that the ombudsperson should not be involved in the legislative drafting process as it may subsequently leave them open to criticism should there be any faults in the legislation once it is passed. In that respect it should be recalled that the ombudsperson should have only advisory power in legislative drafting, whereas the drafting role remains with parliament and/or government bodies. In exercising this advisory role, it is presumed that the ombudsperson will have sufficient expertise or, when necessary, that the ombudsperson will ask for expert assistance.

Finally, when giving advice, the ombudsperson should build both his/her experience and reputation by making accurate and fair assessments of the policy or legislation in question, always acting as an independent and impartial mediator in these and other functions.

- *The ombudsman should help to develop higher legal standards and advance their interpretation.*

The specialized minority ombudsperson is not intended to act as an organ setting legal standards as such, neither should he/she have legal authority to create any binding norms or standards. However, the ombudsperson can still play an important role in the development of higher legal standards. This is usually done through the production of individual reports as well as by making general policy recommendations.

There has now been significant development in legal protection for minorities. Although there are sufficient standards in place to provide a good starting base, some standards appear somewhat vague. Therefore the role of the specialized minority ombudsperson will be crucial in developing these standards. The protection of rights of national minorities, which forms an integral part of the international protection of human rights, must also be seen as a function of good governance. Satisfactory resolution of interethnic issues is in the interest of the state and the majority population, not only the minority communities. It is essential for stability, democratic security and peace. By advancing domestic standards, the specialized minority ombudsperson will therefore also function as an additional mechanism for the prevention of conflicts and disputes.

From Legislation to Action: Encouraging Governmental Programming 6

Minority rights and the protection of minorities, like the rule of law, demands the transformation of international standards, constitutional law and legislation into operational practice for every community and for every individual. The issues involved are complex and diverse covering civil, political, economic, social and cultural rights. They have both an individual and a collective dimension and are often set in a controversial environment.

The Council of Europe Framework Convention contains mostly programme-type provisions setting out objectives which the parties undertake to pursue. These provisions, for which the Explanatory Report to the FCNM will not be directly applicable, leave the states concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take particular circumstances into account.

The FCNM Explanatory Report refers not only to programme-type provisions but also stipulates that the implementation of the principles set out in the Framework Convention shall be done through national legislation and appropriate governmental policies. Consequently governments will need to involve many people with dif-

ferent roles ranging from senior legal advisers of the government in the capital to teachers in primary schools in remote areas.

The strategic powers of the ombudsman-type institution will have a role in defining and coordinating the minority policy of the respective country, and in finding the appropriate solution for addressing the issue as widely and as comprehensively as possible.

- *The ombudsman should be involved in a programme-type approach to the implementation of minority rights.*
- *The ombudsman can offer advice on government action programmes and policy, and may be involved in training and liaising with relevant actors to improve practices.*

The rule of law involves a complex interrelationship between international standards, constitutional law, legislation and both central and local governmental decrees. These must be understood and implemented by a range of different functionaries from judges, prosecutors and lawyers to court officials, local self government legal advisers and the police in all regions of the country. It demands an understanding of the law but also crucial for its implementation is a detailed understanding of what this means in practical everyday terms. Consistency is needed across the country and this will require interpretation, dissemination of information and advice, as well as training on implementation. This will in turn require budgetary resources to ensure that the rule of law is implemented effectively.

Similarly, the programme-type provisions and appropriate governmental policies require policies at a ministry level, the agreement of priorities and an implementation plan both centrally and locally. It will include ministers and civil servants in the capital, local self-government politicians and administrators, local managers and staff to implement the programmes.

The issues are diverse and can range from education and culture to training and employment, involving a wide range of competences and demanding a range of initiatives in different sectors. Once again there will be a need for interpreting and planning based on the rights and protection granted, careful communication through the dissemination of information and advice, and piloting new schemes through competent bodies. This will again require human and financial resources.

The ombudsman's office can play a role in offering advice on what should be done but may go beyond this to helping to train and to bring key actors together to share experiences and improve practices.

The enhancement of good relations between minority and majority communities is crucial for protecting minorities and promoting their identity. The Framework Convention places an obligation on the state to encourage a spirit of tolerance and intercultural dialogue and to take effective measures to promote mutual respect, understanding and cooperation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. Additionally, the Framework Convention obliges states under international law to take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

The ombudsman can play a dynamic role in proposing policies and programmes to the government and its ministries as to how they may strengthen a spirit of tolerance and intercultural dialogue. Acting as a neutral, objective actor, the office can also help ensure that the rights of minorities are respected by majorities and vice versa.

- *The ombudsman should have a role in monitoring progress of governmental action programmes and policy.*

Only a few minority programmes have moved beyond general aspirations and set specific and quantified targets, which provide a basis for monitoring progress. Moreover, in many cases there is confusion between monitoring and evaluation, and the scope of these activities is not defined or is unclear. There is a tendency to consider that internal monitoring carried out by the implementation agencies is sufficient. The issues of monitoring by specially created independent agencies and by civil society is too often disregarded. Each of these forms of monitoring has its own rules and conditions which should be examined and then embedded in the policy-making process.

These should, at minimum:

- provide for the creation of independent monitoring systems to analyze and review progress in policy, and services development and implementation, with clear terms of reference, work programmes and working methods. Regular public reporting on progress must be ensured;
- put in place procedures to target and monitor funding allocated to minority-related projects (i.e. regular reports including a breakdown on expenditure);
- allocate funding for monitoring projects carried out by minority non-governmental organizations; and
- provide support for capacity-building of minority organizations, so that they will be able to play an active role in monitoring the implementation of projects designed to benefit them.

- *The ombudsman should be involved in evaluating programmes and projects supporting minorities.*

There is a pressing need to evaluate the impact of projects and programmes for minorities. Since it is change on the ground that matters, the real impact of changes in attitudes, actions and policies needs to be assessed in a way which is both credible and useful. Neither the amount of funding nor the compliance with budget lines and expenditures is a criterion for the adequacy of a project. Impact is what matters and for it to be assessed there is a need for quality base line studies, which will lay the foundation for reliable and credible impact assessments. In order to assess the impact of projects and programmes, a methodology is needed which addresses the issues of validity, reliability, credibility and attribution. For a primarily qualitative approach to be consistent with the overall aims of minority projects it must also address the issues of participation, ownership and empowerment by the minority themselves.

So far, analyses of projects and funding are too often based on either a few intuitive assessments, randomly collected qualitative information, or on items of quantitative data which amount to a description of what has been done and not what has changed.

Planning the implementation of policies should be completed with detailed chapters on evaluation, which would permit impact assessment, independent of any governmental structure and based on the views of the target groups and participating individuals. The whole spectrum of types of evaluations should be taken into consideration: ex ante (preparatory and feasibility studies, appraisals); mid-term (during the implementation of the project); end term (at the completion of the project); ex post (some time after completion).

During the implementation, attention should be paid to formative evaluation – where the evaluator is a member of the implementation team whose role is to continu-

ously give feedback to the team with information about the reactions and opinions of the beneficiaries.

A process of 'benchmarking' the results of programme evaluations against other projects at a national level, and/or trans-nationally, would provide useful data on the effectiveness of the programmes and lead to the more efficient use of financial and manpower resources.

- *The minority ombudsman should promote, initiate and support policy research helping the creation and implementation of policies relating to minority rights.*

The minority ombudsman also conducts research into issues of racial discrimination or orders relevant policy-oriented research from specialized research institutes, researchers or experts working in the field. Proposals for policies and programmes need to be based on high quality evidence, good research and evaluations that will enhance the ombudsman's reputation. The institution and its experienced staff will have a good perspective in determining what kind of policy-oriented research is needed for the advancement of minority policy, and what research best furthers the enforcement of minority rights. The office may encourage or promote research, which could be undertaken in-house or sub-contracted.

- *The minority ombudsman may facilitate the establishment of and promote networks of minority organizations.*
- *The minority ombudsman may work in a liaison function to promote contact between minority organizations, public bodies, branches of government, non-public sector organizations, and between each of these categories of organizations and bodies.*

Involving and consulting minority organizations is primarily the task of the policymaker, however, the minority ombudsman will have an important role in monitoring whether this task is adequately performed by the various state actors and in facilitating its application.

- *The ombudsman can use its reports to provide feedback on laws, policies and practices, and to signal the necessity of change in a systematic manner.*

The annual reports presented by the ombudsman to the appointing body will aim, on the one hand, to make public the activity and the findings of the ombudsman, and on the other hand, to make recommendations concerning legislation, policy and practices based on the individual complaints received by the ombudsman and the formal investigations conducted on its own initiative. Thus the institution is a very important actor in both monitoring and evaluation, provides feedback on how existing laws, policies and practices operate, and where an amendment or new legislation or policy is needed. Even though the ombudsman will not always have the power to make suggestions on the substance of change, it can signal its necessity, and highlight the nature of the problem.

These practices are all part of a programme-type of approach to the implementation of minority rights.

- *The minority ombudsman should:*
 - *develop good practice guides in the field of implementation of minority rights*
 - *develop or promote training and teaching of minority rights*
 - *develop and promote anti-racism, anti-xenophobia and pro-tolerance campaigns in cooperation with the media*
 - *be involved with promotional activities and education.*

“Recalling that an effective strategy against racism, ... and intolerance resides to a large extent on awareness-raising, information and education of the public ...”

ECRI General Policy Recommendation No. 2, Preamble.

“A national institution shall ... assist in the formulation of programmes for the teaching of, and research into, human rights...”

Paris Principles, Principle 3(f).

Underlying the entire idea of the ombudsman institution in general, and the minority ombudsman institution in particular, is the task of educating the public and the public authorities. The minority ombudsman has a role to play in initiating public debates concerning recognition of minorities and tolerance, and can initiate campaigns for teaching the public about the rights of minorities, but it should also have an educational role even in the case of solving individual complaints and by making public the results of its investigations, by eventually publicizing good practice and by criticizing acts of abuse.

Many ombudsman institutions recognize the educative role as one of their important functions. Education can be effected through individual persuasion but also through indirect impact: through annual reports presented to parliament or the appointing state department; through codes of conduct; through standards of good practice in the different fields that are provided for the employees of relevant bodies, for offices or for any other concerned party. The aim should not only be to improve general practices but also to establish benchmarks, so that authorities can regulate their own practices.

Promotional powers are understood by the 1997 ECRI Recommendations to include providing information and advice to relevant bodies and institutions, counseling actors of specific relevant areas on standards of anti-discriminatory practice, promoting and participating in the training of different key societal groups on tolerance, anti-racism and anti-discriminatory practices, promoting awareness in society of issues of discrimination, including preparation and distribution of information and materials and, finally, supporting and cooperating with organizations that have objectives similar to that of the specialized body.

For example, in the run-up to the Olympic Games in Athens in 2004, the Office of the Greek Ombudsman disseminated information to foreign ministries and the Greek police force about human rights and detention issues that could arise due to the increased pressure during the Olympic Games.

The ombudsman institution has an important role in educating the public about its own role (what falls within its mandate and, importantly, what does not) but it should also to be pro-active, ensuring that minority rights standards and multiethnic cooperation are promoted. This has the twin advantage that minorities will be protected and that the ombudsman is less likely to be called upon to respond to problems.

Codes of conduct showing good practice in important fields where violations of minority rights can occur can be provided by the ombudsman for the relevant actors in those fields. Good practice codes will, on the one hand, help actors to avoid violation of the rights of minorities, and on the other hand, they may also provide guidance on how to improve equality of opportunity for the members of disadvantaged minority groups, how to design appropriate and acceptable affirmative action programs etc., and how to monitor policies.

This work should be based on international standards, including the Council of Europe Framework Convention for the Protection of National Minorities and the EU Charter of Fundamental Rights. The ombudsman should ensure that international standards for the protection of minorities are understood and well publicized by government and civil society, including organizations representing minorities. The standards, codes of practice and models of good practice should be publicized in relevant minority languages, and known and enjoyed in all parts of the country.

Models of good practice can be a useful learning tool and the ombudsman should ensure that where the office has achieved some success these are well known to potential future clients. This is not being immodest, rather it is a way of building up confidence that members of minorities may usefully refer issues to the ombudsman in the hope of achieving a successful outcome. Similarly it is very important that potential beneficiaries throughout the state know of or may be able to find out about the work of the ombudsman, which issues are within the office's competences, how to make contact with the ombudsman, what service to expect and, importantly, which issues are outside their competences.

The office can play a role in promoting awareness in society of aspects of violations of minority rights, including preparation and distribution of information and materials, and encouraging educators to be sensitive to celebrating diversity in the curriculum. Promotional work can also include lectures at university law schools and suggesting research theses on issues of concern to the ombudsman. Constructive media coverage can help advance thoughtful approaches to difficult issues though this demands a long-term strategy to cultivate sensitive journalists.

The Annual Report can be of value to international treaty monitoring bodies such as the Advisory Committee of the Framework Convention or the Committee of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), who

can use the ombudsman's report to identify the key issues and have those issues placed in an objective context. Conversely, the Advisory Committee may be able to support the ombudsman's concerns by raising the issues in their Opinion. The Paris Principles set out that the institution shall contribute to the reports which states are required to submit to UN bodies and committees and to regional institutions, pursuant to that state's treaty obligations.

The ombudsman can support and cooperate with civil society organizations with objectives similar to those of the specialized body. They can include providing information and advice to relevant bodies and institutions, and counseling actors about specific issues including anti-discriminatory standards and practice. The office can facilitate training initiatives by bodies such as the Council of Europe, assisting civil society organizations to contribute to state reports on minority issues and writing their own shadow reports.

In a number of countries an ombudsman plays a facilitating role, bringing together civil society and government to enter into discussion on areas of mutual concern in a neutral and trusted environment. These may be through conferences, seminars, workshops or on occasion private discrete discussions on sometimes controversial policy issues that need resolution. This may also involve joint training sessions or separate training programmes.

The ombudsmen can help bring relevant parties together to meet international or domestic experts to discuss complex issues and, like many already, hold private meetings themselves with visiting treaty monitoring bodies, including the Advisory Committee. Ombudsmen have helped convene meetings with the Advisory Committee as it has been visiting a country before formulating its Opinion. Additionally, after the Opinion has been formed, ombudsmen have helped in convening round-tables to enable discussions to take place between government officials, minority organizations and the Council of Europe.

There are a wide range of ways of reaching the diverse audiences that the ombudsman may want to approach on a variety of issues. It is important to be clear about the objectives and the audience before media are selected. Media may include private conversations, workshops, seminars, conferences, radio broadcasts, leaflets, brochures, reports, books, posters, advertising, television broadcasts and the internet *inter alia*.

It is always important to be sensitive to the audience to ensure that messages can go well beyond the capital to the distant parts of the country, to use messages that are appropriate to the audience, sensitive to different levels of education, understanding and literacy and which are in understandable language. Timing can also be relevant as the same statement made at different times can come across very differently depending on the changed circumstances.



PART II



FOUNDATIONAL CRITERIA FOR ESTABLISHMENT

1 Political Independence

- *An ombudsman must be independent from executive intervention.*

The most important quality for an ombudsman is independence from executive intervention. Most pieces of legislation establishing an ombudsman institution contain explicit statements concerning the independence of the office.

As minority protection tends to be a politically sensitive issue, the need for the minority ombudsman to be independent and free from interference by executive (and other) forces is even more critical than for a parliamentary ombudsman.

2 Legislative Establishment

- *Establishment of the institution should be able to be traced back to an Act of legislation and not an executive decision.*
- *It is advisable that the establishment of the institution of minority ombudsman is enshrined in the Constitution so that its position is secured.*

A distinction must be made between the establishment of the office/institution (one time, one legislative document with possible subsequent amendments) and the appointment of the specific ombudsperson(s) (every time a new ombudsperson is appointed). Whereas the former should be traceable back to a legislative, even constitutional, Act, there is less uniformity in practice as regards the latter. There tends to be some role of the legislative body/parliament included, but there is great variety in the actual extent of this involvement.

Establishment of the institution needs to be done by the legislature and not by way of executive decision. An analysis of various national ombudsman institutions shows that the establishment of the office can almost always be traced back to an Act of legislation. In several, but not the majority of instances, the state's constitution already provides for the establishment, and contains certain requirements/criteria, while leaving the details to be regulated by organic law.

In view of the sensitivities surrounding minority protection, it is advisable that the establishment of the institution of minority ombudsperson is enshrined in the Constitution so that it is secured, guaranteed and not dependent on political whims of the ruling party/parties.

The UN Paris Principles relating to the status and functioning of national institutions for protection and promotion of human rights are clearly relevant when considering the establishment of a minority ombudsperson. The Paris Principles

do not provide detailed guidance concerning mandate and competence and only seem to require that the establishment goes back to a constitutional or legislative text, setting out these topics. While the establishment is linked to a legislative or even constitutional text, according to the Paris Principles the actual appointment is merely required to be effected by ‘an official act’ without further specification, thus leaving scope for considerable variation between states.

It seems appropriate to point out that an executive ombudsperson is acceptable in so far as it is appointed by and reports to the executive, provided it meets the conditions for independence set out in the ECRI Recommendations on specialized bodies. Preferably, in order to maximize the independence of the institution the establishment must be done by a legislative Act. If the establishment is done by executive decision, this should be based on a legislative act giving the executive that competence and should comply with all requirements (aimed at ensuring the independence of the institution) spelled out in that Act. It is in any event key that the institution should not be part of the executive/departmental structure since that would raise legitimate concerns about the independence of the institution. Justice should not only be done, it should also be seen to be done.

The Act of legislation establishing the institution should be sufficiently adapted to the specific circumstances in the state, while attempting to be in line with the preferences outlined in this Guide. In the following, reference will be made to ‘Act of legislation’ which would include all the options indicated as acceptable above.

“Specialized bodies should be given terms of reference which are clearly set out in a constitutional or other legislative text.”

ECRI General Policy Recommendation No. 2, Principle 1.

- *It is commendable that minority ombudsman institutions are also established at sub-state levels if the corresponding level of government has competences that are specifically relevant for minorities.*

A decision must be made as to whether an ombudsman will only be established at national level, or also at regional or even local levels. Especially in federal systems, the question whether the federated entities can and should also establish a minority ombudsman is certainly relevant in view of the growing acceptance that the existence of minority groups should not only be determined at national level but also at sub-state level.

In the following sections, the terms used will be limited to the national level (e.g. Act of legislation) but should be read as to include the corresponding terms at sub-state level (e.g. regulation by the provincial assembly or assembly of the federated entity).

3 The Act of Legislation Establishing the Institution

- *The Act of legislation establishing the institution should specify as a minimum:*
 - *the mandate, functions and powers of the office*
 - *the requirements to be fulfilled by the persons to be appointed as ombudsperson(s)*
 - *the exact appointment procedure to be followed*
 - *the status of the ombudsperson*
 - *the level of accountability to parliament*
 - *the immunities of the ombudsperson*
 - *the term of office*
 - *rules concerning his/her dismissal*
 - *a list of incompatible employment or positions*
 - *procedures for a conflict of interest in a specific case*
 - *rules concerning remuneration*
 - *the budgetary autonomy*
 - *the competence to appoint staff.*

All of the above points to be included in the Act of legislation establishing the institution are important determinants of the status of the office and/or essential guarantees for the independence of the institution. Some of the above points are discussed in further detail in Part III of this Guide.

4 Procedures for Appointment of the Ombudsperson

- *The Act of legislation establishing the institution should set out a clear and specific appointment procedure for the ombudsperson.*

It should be acknowledged here that the UN Paris Principles merely refer to appointment by an 'official act', which is broader than Acts of legislation.

One of the most important questions in the appointment process is indeed the degree to which parliament (the representative body) is involved. It seems essential for the independence or perceived independence of the institution that the executive does not have a dominant role in this. Furthermore, the related danger of abuse could be countered by making the appointment decision justiciable. It is in any event important that the appointment process be clearly outlined in the establishing Act, so that there is no room for debate about the respective role of parliament, the executive or any other body that could be implicated.

The legislative Act establishing the office should clarify the following issues concerning the appointment. If there is a nomination procedure, a first issue that needs to be considered is who can nominate? The national Acts of legislation on this topic do not always make reference to nomination, while those that do reveal a wide variety of mechanisms. In any event, a cross-reference needs to be made to the issue pertaining to the possible involvement of minority communities. Secondly, it needs to be determined how many persons are to be nominated and whether there is a minimum and/or maximum number? If more than one person can be nominated, it is important to decide what body has the power to determine who will actually be appointed. Once again, considerations of independence call for minimal interference by the executive authorities.

The next question is whether the appointment is done by legislative Act, or by executive decision. If the appointment is finalized/realized by an Act of parliament, this would mean that the parliament has a major say over the appointment of the ombudsperson, which augurs well for its independence from government. Nevertheless, it should be kept in mind that the coming about of an Act generally requires a ratification by the executive. If the appointment is realized by Act, it also matters where the right of initiative lies regarding the Act appointing an ombudsperson. In general, government/the executive has the power of initiative in the general legislative process.

If the appointment is finalized by an executive decision, it is important to see whether this is a discretionary decision of the executive or whether the executive can only execute a decision already taken by the parliament. In the latter case, the actual damage to the (perceived) independence of the institution is minimal. If the appointment is realized by an executive decision, another option is that parliament has to give its advice, which can be accepted but also rejected by the executive. This last option is obviously the least desirable from the angle of the necessary independence of the body.

Regarding the involvement of parliament, it should be decided whether the decision is taken by simple or special majority. A heightened majority would increase the legitimacy of the person appointed, but could also frustrate the entire appointment process when certain political parties are against the office. Most national legislation concerning ombudspersons does not require a heightened majority.

5 Minority Involvement in the Appointment Process

- *The Act of legislation should specify the way in which, and the extent to which, minority communities are involved with the appointment process.*

In the few pieces of legislation specifically drawn up for minority ombudspersons, the involvement of minority communities in the appointment process is not regulated at all. Nevertheless, it is self evident that it is important for the legitimacy of the body that the minority communities in the country are (to some extent at least) involved in the appointment procedure. This will undoubtedly enhance trust in the institution by the respective communities concerned.

The latter expression, 'communities concerned', ties in with the mandate issue regarding the communities that are to be served by the ombudsperson (see above in the Introduction). It is in any event essential that the way in which this is realized is clearly regulated in a way that does not arbitrarily exclude groups. While there are of course considerations of practicality, an inclusive approach seems advisable. The following issues need to be clarified in the Act establishing the institution: How are the communities concerned identified? Who represents the community? Will each group have one representative in the college of community representatives or will the amount of representatives per community depend on its relative numerical strength? Another matter that needs to be spelled out in the Act establishing the institution is the actual degree of involvement of the minority communities, and the procedures for involvement. The options concerning the actual influence of the minority community range from being merely consultative to having decisive powers.

Personal Requirements/Criteria for Appointment

6

- *The Act of legislation should determine the criteria for appointment of the ombudsperson(s). These will tend to include a nationality requirement, considerations of expertise and experience, as well as of representation as regards the ethnic diversity of the country for the institution's staff.*

The UN Paris Principles specify certain rules concerning the composition of the office in relation to guarantees of pluralism. These rules should not only apply to the overall composition of the entire office but also to the various ombudspersons or deputies in case the office has more than one. The relevant principle states that “the composition of the national institution and the appointment of its members ... shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (civil society).”

Regarding the ombudspersons themselves there are three general requirements that recur (in one way or the other) in the existing national pieces of legislation:

Citizenship of the country concerned: While most national pieces of legislation require citizenship, there are also arguments against including such a requirement, as well as a certain trend to eliminate it. Note that a foreign citizen has been appointed as an independent ombudsman in some transition states or territories.

Expertise/experience: Efficient functioning of the office requires the ombudsperson to have certain qualities, expertise and experience, while it is equally important that the entire institution is multi-disciplinary. The ombudsperson should be a good manager and have affinity with dealing with questions of population diversity, human and minority rights. Some experience in the public service could be desirable. Having a law degree is often a requirement or desired background. Additionally, it is often required in establishing legislation that the ombudsperson be of high moral character, and be able to be impartial. Formal connections with party politics must be excluded.

Belonging to a minority: The most important requirement is that the ombudsperson is impartial when dealing with complaints, which is best served when there are no ethnic or other allegiances in play. In cases where more than one ombudsperson is to be appointed, population diversity should be reflected.

In some countries proof of adequate knowledge of minority languages spoken in the country will be desirable, however this can also be covered by the appointment of appropriate staff.

7 Employment Conditions – Remuneration, Tenure and Dismissal

- *Clear regulations as to positions incompatible with that of ombudsperson, and the remuneration of the ombudsperson are essential to guarantee the institution's independence.*

In view of the crucial nature of the independence of the ombudsperson, his or her status should not be one of civil servant, but preferably one of an independent authority.

It would seem acceptable that he or she would be an officer of parliament as long as independence from parliament is ensured. Similarly, the office should be answerable and accountable to parliament (e.g., with its annual report), not to the executive government.

A list of incompatible employment/positions is also essential for the independence and impartiality of the ombudsperson. It is often stated in establishing legislation that the position of ombudsperson should not be combined with any other remunerated position.

Clear regulations on how remuneration for the ombudsperson is established is also important to guarantee the independence of the institution. It would seem advisable to use certain benchmarks, such as parity with a certain type of judge. It is in any event important for independence reasons that it is set in a manner which is beyond the authority and control of the executive government. The pension regulation should also be specified in the establishing legislation.

- *A fixed term of office not linked to the term of office of parliament is the preferred option for tenure.*

To secure an independent status there should not only be sufficient guarantees against arbitrary removal (see below) but there should also be clarity about the term of office of the ombudsperson, which should not be dependent on executive decisions. There are two main possibilities for the term of office of the ombudsman. The main division is between appointment for life versus appointment for a fixed period of time. In the case of a fixed term of office, there are two further issues, namely whether there is a relation to the term of parliament and whether there are any, limited or unlimited, possibilities for reappointment.

The Paris Principles state that the official act which effects the establishment of the human rights institution (in this case the minority ombudsperson) shall specify the specific duration of the mandate. Arguably this seems to preclude an appointment for life (which is normally the case for judges). The latter is further confirmed by the following statement from the Principles: "This mandate may be renewable, provided that the pluralism of the institution's membership is ensured."

An appointment for life (until the age of retirement) would enhance the independence of the institution. At the same time continuity would be ensured, which facilitates the possibility of acquiring substantial, accumulated experience and knowledge, as well as potentially improving the status of the ombudsperson as a known figure in society. However, an appointment for life might stifle the dynamism of the office, the ongoing renewal of its practices and style of operation. It is indeed vital

that the ombudsperson stays in close touch with the changes in society. Therefore it seems important that a new ombudsperson is appointed at regular intervals, while at the same time, the continuity of the office should be ensured through the other staff, whose term of office would not run concurrently with that of the ombudsperson.

If one then opts for a fixed term of office, it must be decided how long the term should be. The national pieces of legislation show a certain variety, ranging from four to about six years. The need to have some continuity and stability in the ombudsman institution would argue against the term of office of the ombudsperson being tied with that of parliament, so that the appointment of the ombudsperson is not politicized or linked to a particular parliament. A term of office longer than that of the parliament, for example, six years, is recommendable.

Finally, it needs to be determined whether there is a possibility of reappointment. The Paris Principles leave that option open. If reappointment is possible, the question arises whether there is a limit to the amount of times that it can be renewed. Here similar considerations apply as regards the choice for an appointment for life versus for a fixed term discussed above.

- *The Act of legislation establishing the institution should identify clearly the conditions for and procedure of dismissal of the ombudsman prior to the end of term. It is crucial that an exhaustive list of grounds for dismissal is specified.*

Another important issue concerning the independence of the ombudsperson is his/her security of tenure. This would require that there are strict and stringent requirements for removal prior to the ombudsperson's end of term or for suspension of office. It is advisable to have an exhaustive and detailed list of grounds for which removal is possible in order to secure the independence of the institution. In order to secure continuity and at the same time protect the security of the position of the ombudsperson, regulations for procedures when an ombudsperson is ill or incapacitated (temporarily versus permanently) should also be clearly set out.

Despite the strong focus on independence in the Paris Principles, they do not contain a clause dealing with removal or suspension of the ombudsperson. Most existing national pieces of legislation concerning ombudspersons do provide such guarantees in the sense that the Act establishing the office prescribes the procedure to be followed as well as an exhaustive list of grounds that can lead to removal.

It seems important that the establishing Act clearly indicates what person/body can make the final decision concerning removal. To maintain independence, the final decision/responsibility should not lie with the executive/government authorities. If, however, the executive does hold this power, it should be strictly circumscribed regarding the grounds for removal and the fairness of the process. In this case it may be additionally important that the decision be reviewable by a court of law.

Secondly, the establishing Act has to determine the grounds on which an ombudsperson can be removed. To safeguard the independence of the office, it is essential that a limited, exhaustive list of grounds is established and that these grounds are clearly and unambiguously formulated. While there is a degree of variety between the grounds of removal in the national pieces of legislation concerned, recurrent themes are disability, being convicted for certain offences, incompetence, or malfunctioning of some kind. There should in any event be sufficient guarantees for an equitable removal process, including, for example, that the ombudsperson is fairly heard.

A final matter that should be clarified is whether (and what kind of) judicial review is possible against the decision to remove an ombudsperson. Judicial review enhances the protection of the ombudsperson's position, and hence its independence.

Similarly, it is commendable to provide a clear regulation with adequate guarantees concerning both the grounds for and procedure of suspension.



Immunities

- *The legislative Act should provide for immunities for the ombudsperson and persons acting on his/her behalf.*

It is common for legislative Acts of establishment to include immunity for the ombudsperson or persons acting on its behalf from criminal prosecution, and sometimes also from civil suit. Immunities are important to secure the independent status of the ombudsperson, even though there are several national pieces of legislations which do not contain a clause to this effect. The formulation can be general and/or can refer to the statements made in the exercise of the functions. In case of the general formulation, it tends to indicate that the ombudsperson may not be detained, searched or arrested for criminal offences or misdemeanors concerning an opinion expressed or act committed in the discharge of their duties, which is often supplemented by the proviso 'unless in case of *delicto flagrante*'.

Generally the immunity is not absolute but will apply in respect of anything done in the course of the ombudsperson's statutory duties. However, in a number of jurisdictions, the immunity from prosecution is of a more limited nature, sometimes with legal action against the ombudsperson being possible with the prior consent of parliament or only by the chief public prosecutor. Immunity from civil litigation is less common, and would be unreasonable if such immunity could in any way be used to avoid certain commercial contractual obligations or obligations under employment, health and safety and other such legislation.

To the extent that the ombudsman institution is involved in investigating complaints, and reporting to parliament and the public on such activities, it is advisable to provide some immunity from defamation laws for information supplied or documentation produced in good faith in the exercise of any power, duty or function of the ombudsman, not only to the ombudsman institution, but also to complainants, and the press, which reports on the complaints and their outcomes. This encourages full dissemination of information, for example from witnesses, without fear of legal proceedings.

Appointment of Deputy Ombudspersons and Staff

9

- *The Act of legislation should set out the procedures for appointment of deputy ombudspersons and staff of the institution.*

The Act establishing the ombudsman office should also specify certain issues concerning the appointment of other staff. The main distinction here is whether the appointment of staff is done by the ombudsman him/herself or whether it is done by another body. The ombudsman should have the independence to do so, within a framework meeting the criteria for adequate resources as set out in the UN Paris Principles. The Paris Principles state that the institution shall have an infrastructure which is suited to the smooth conduct of its activities, which also includes the necessary personnel and financial resources to fulfill its multifarious functions. Budgetary autonomy should also be guaranteed by the Act establishing the office of the ombudsman, in the sense that the necessary funds should be guaranteed for the office to be able to fulfill all its functions. In view of the need for an independent body, if it is not the ombudsman who appoints the staff, it is preferable that it not be done by an executive body but rather by an office in parliament.

Where a specialist mandate for minority protection is to be assigned to one of the deputy ombudspersons, the appointment process of this officer becomes very important. The same criteria will apply to the deputy in this case as to the general appointment of the ombudsman discussed above.



PART III



**BRINGING INTERNATIONAL STANDARDS TO BEAR –
KEY ORGANIZATIONAL AND OPERATIONAL ISSUES**

The focus of this part of the Guide is on matters relating to the internal organization and ongoing operation of the ombudsman institution, rather than issues relating to its mandates and functions (considered in Part I, above) and its establishment (considered in Part II, above). However, those issues are also relevant to the discussion in this part, as the principles underlying the establishment of the institution should inform its day-to-day operations, and its mandates and functions will shape its internal organizational structure.

There are a number of core values a minority ombudsman institution should foster and which should be reflected in every facet of its operations. In this section, these core values are considered, and practical examples of how they can be implemented are provided. It is important to note that these values are often inter-related, and the promotion of one can have a positive impact on the others.

1

Independence

- *The ombudsman must be, and be perceived to be, independent.*

Independence involves both de jure and de facto independence from the executive, and independence of individual members and employees, so that they are not, nor are they perceived to be, pursuing particular 'sectional' interests. The importance of institutional independence, discussed in Part II above, should be kept in mind here, as the same rationale should underlie all aspects of the institution's work.

In order to be effective, an ombudsman institution must be, and be perceived by the public it serves to be, honest and reliable; in order to hold the government, civil service and other public bodies to account, it must be independent of those bodies. However, to be able to effectively resolve disputes relating to minorities, it must also be perceived by both the government, civil service and other public bodies, on the one hand, and the wider public on the other, of not being beholden to any special interests.

"Specialized bodies should function without interference from the State and with all guarantees necessary for their independence including the freedom to appoint their own staff, to manage their resources as they think fit and to express their views publicly."

ECRI General Policy Recommendation No. 2, Principle 5.

- *Having staff from minority communities can enhance the effectiveness of the institution.*
- *Representation can also be ensured by having sub-offices in regions where there are significant numbers of minorities.*

The value of independence should inform the staffing policy of the minority ombudsman institution. Membership in a minority should obviously not disqualify a person from employment – indeed, given the other values that the institution should adhere to, having staff from minority communities is essential to its effectiveness. Similarly, past membership or participation in an organization with which the ombudsman institution will be dealing, such as a minority group NGO or other advocacy body, a political party and so forth, must not be a bar to employment; indeed, a person may have gained some useful insights and contacts from such work. However, if staff members hold positions in such organizations, the potential damage to the institution’s image as being impartial and free from influence must be carefully considered. To be effective, it must be, and be seen to be, impartial, by the communities it serves and the governmental bodies it scrutinizes, as well as by the wider public.

- *The staff composition should be representative of the diversity in society.*

As noted above, in order to be effective, the minority ombudsman institution must seek to be perceived by all as being trustworthy and free from influence; while the institution may be sympathetic to the needs of minority communities, it is important that it not be perceived to be an advocate for such communities or to be in their service. It must be impartial and professional. Nevertheless, it should strive to reflect, at least to some extent, the diversity of the communities it represents, and this should be reflected in its staffing policies. This is important for at least two reasons. First, it may be a practical necessity: members of minority communities will bring special knowledge of those communities, and will help the ombudsman in assessing the environment in and, indeed, the politics of the minority communities; also, special language skills may be required in dealing with a particular community (in taking complaints, in conducting investigations and other research, in preparing publicity and in dealing with the media, etc.), and staff from the minority group who are competent in its language are very important. Second, a staff which broadly reflects the composition of the minority communities is symbolically important: if the institution has members of minorities in positions of responsibility, people from such communities may be more likely to view the organization as acting and speaking with greater authority, and being worthy of greater trust.

“The composition of specialized bodies ... should reflect society at large and its diversity.”

ECRI General Policy Recommendation No. 2, Principle 4.

The degree to which the minority ombudsman institution is representative will also be enhanced by ensuring that it has offices in regions in which there are significant numbers of minorities, and that the staff in such offices is, at least in part, composed of members of those minorities, for reasons described above. The presence of offices and the devolution of functions, particularly investigative and fact-finding functions, to such offices both increases the effectiveness of the institution and helps to create the sense that the institution is open and accessible, and that the services it offers are close at hand. Physical remoteness from the communities it serves may impose not only psychological barriers, but also real costs to the community in being able to gain access to the institution’s services.

- *The ombudsman office must offer a multi-disciplinary approach.*
- *The ombudsman office needs a recruitment strategy to appoint staff with the requisite skills, including being proactive in relation to persons from minority communities.*
- *Links with organizations and universities should be maintained to aid with staff training.*

As noted above, the integrity of the minority ombudsman institution will be enhanced by developing a reputation for competence and, indeed, excellence. This is enhanced through good staffing/recruitment policies, including the development of clear and measurable appointment criteria, an appropriate policy on conflicts of interest, the prohibition of nepotism, and so forth.

As has been made clear from the description of the functions of the institution in Part I above, the institution has a range of functions, and therefore needs a range of skills to discharge these functions. The protection of minorities has many aspects, from legal, to sociological, to economic, to political, and often these aspects will interact. It is essential that the body has skills in all these areas, and can also ensure that cross-cutting competencies are brought to bear on all minority issues. With respect to some functions, particularly those relating to investigations, staff with both the requisite technical skills and competence in different languages will be required. The institution will therefore have to develop a recruitment strategy appropriate to these ends.

In some cases, the process of recruitment may be hindered by the lack of persons from minority communities with the requisite skills. In such circumstances, the institution must be proactive, and should consult and build links with educational and training institutions, particularly universities, to ensure that persons are being trained to develop the requisite skills and that they are aware of employment opportunities with the institution.

Even where persons with the requisite skills are recruited, it is crucial that the institution develop a strategy for in-service skills training. Relevant legal standards – both domestic and international – can change dramatically, and research techniques, good operating procedures and so forth can evolve over time. The institution should therefore work in close coordination with practitioners in relevant fields, NGOs, professional organizations, and university departments that deal with the same sorts of issues to develop training courses, and should regularly undertake a skills audit of staff.

- *Exchanges of staff from relevant intergovernmental organizations, ombudsman institutions or universities is possible, however, conflicts of interest must be considered.*

An exchange or secondment of staff from other ombudsman institutions, from colleges and universities, or from international organizations should, in principle, be possible for the minority ombudsman institution. Indeed, as it may lack staff with particular skills or experience, the ability to obtain such services from a person employed at another institution through a secondment can be very valuable for the institution. Upon the return to their organizations, the staff bring back valuable information which can usefully be disseminated within the organization, raising awareness about minority issues, good practices, and so forth. The person seconded should enter into a confidentiality agreement with the ombudsman institution, under which they agree not to divulge any sensitive information to which they may have had access while at the ombudsman institution.

For example, the Danish Institute for Human Rights, the Equality Commission of Northern Ireland and the German Institute for Human Rights have established a two-month staff exchange program. Similarly, the Office of the Ombudsperson in Kosovo and the Citizen's Defender in Albania have arranged temporary staff exchanges between their offices.

- *The ombudsman institution must enjoy financial independence.*

The importance of trying to guarantee that the ombudsman institution is as financially independent as possible was discussed in Part II. The financial independence of the institution is maximized by ensuring that its funding by the government is not discretionary, but is based on a non-discretionary formula, automatically adjusted for inflation, that is ideally set out in the statute or other legislative act by which the institution is created. If the funding of the institution cannot be safeguarded in this way, the institution should make use of its annual report to highlight its budgetary needs, and to raise the issue of its budget before parliament, in the course of its scrutiny of the institution's annual report. While it is often the case that funding for institutions such as an ombudsman is insufficient, the institution should only accept external funding for specific projects or capacity-building endeavours so that the ombudsman can retain control over the funds. The independence and power of instruction over the funding should be ensured by contract. In all other cases, the existence of such financial links can create the impression that the institution is no longer unbiased, and this could compromise its effectiveness.

"The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence."
Paris Principles, Principle B(2).

- *The ombudsman institution must follow the contracting rules that apply under domestic law to public bodies.*
- *A contract should not be awarded where a conflict of interest exists.*

The minority ombudsman institution will almost certainly enter into contracts of varying types, from purchasing equipment or purchasing support services, to the awarding of contracts for research relating to the work of the institution. The institution is likely to be bound by a set of contracting rules which apply generally under domestic law to public bodies, and as such, officers and staff should be thoroughly familiar with such rules, ensuring that they are adhered to. If no such rules apply to the institution, or if such rules are insufficiently developed, the institution must prepare its own rules, which it should publicize generally and provide to all prospective contractors, and it must then adhere to them. These rules should reflect the highest standards with respect to tendering and competition for contracts. In all cases, the terms of the contract competition, including the specifications and criteria to be applied, must be made clear. Generally, contracts should be given to the lowest (or where appropriate depending on the competition, the highest) bidder meeting all the criteria, unless there are compelling reasons to choose another bid. In all cases, any conflicts or potential conflicts of interest must be declared, and in no case should a contract be awarded where such a conflict exists.

The ombudsman institution may also develop an office policy that all sub-contractors are required to protect and promote minority rights and comply with international human rights standards, or have a diversity policy in place in their organization or business.

2 Integrity

- *A fair appointment and promotion policy will assist in maintaining the integrity of the institution.*

The minority ombudsman institution must have integrity. Integrity is closely related to independence, and independence, both institutional and of its membership and staff, will greatly assist the integrity of the institution. However, integrity goes beyond independence; it also relates to competence and to moral standards.

The integrity of the institution can be best fostered through its hiring and promotions policy. Job competition should be based on a clear description of the position and skills required, and should be based on a selection process that is open and free from bias. Primacy in selection should be based on competence, as measured by demonstrable and assessable criteria. Ideally, all interview panels should have an independent assessor, for example a human resources consultant from outside the institution and the civil service, to attest to the fairness of the process. Finally, there should be a clear policy on nepotism that is rigorously applied. The appointment of those who share a business or other significant financial or professional interest with board members, officers or senior staff, or with their relatives, should be disqualified from appointment. The aforementioned principles are important for all appointments, but are particularly relevant to appointments of senior officers and staff. There should be no question that any appointment has been made on the basis of political connections, business or professional, significant social or family ties.

The integrity of the institution can also be fostered through the elimination of any conflicts of interest, real or perceived. There should also, however, be no doubt about the moral integrity of officers of staff. Thus, persons who have been convicted of serious criminal offences should not be considered for appointment, and should be subject to dismissal, if already appointed.

3 Moral Standing

- *The minority ombudsman institution needs the trust of minority communities and the wider majority community if it is to be effective.*

A minority ombudsman institution will be most effective when it has developed a reputation for being trustworthy. If it does not have the trust of the minority members themselves, it will have greater difficulty in working with those communities: members of those communities will be less likely to bring complaints, particularly serious ones, to the attention of the institution; fieldwork, information gathering and

research within the communities will be more difficult; and education campaigns and other initiatives to diffuse knowledge about both legal standards and remedies will be hampered. The institution must also have the trust of the government and public bodies which it will be scrutinizing: such bodies will be less likely to cooperate in investigations and research activities, and less likely to implement the findings of the institution, where they believe that the institution is biased or not fully competent. Finally, the institution must also have the trust of the wider majority community: public education will be less effective and the decisions of the body will be downplayed or dismissed if the institution is not trusted.

Accountability and Transparency

4

- *The ombudsman institution must be fully accountable and adhere to its formal reporting requirements.*

The minority ombudsman institution should be fully accountable to parliament, both with respect to its operations and its expenditures: the parliament should know about and be able to make judgements on how well the institution is discharging its statutory and other duties, and on how well it is managing and employing its budget. Indeed, there are likely to be formal reporting requirements to the parliament, and these must be strictly adhered to.

- *The annual report is a good tool to account to parliament and promote the institution.*

Institutions are generally required by the legislation under which they are created to prepare an annual report, and to place it before parliament and sometimes provide a copy to the executive, but even if this is not statutorily required, it would be good practice to do so. As a minimum, the annual report should contain: a description of the institution's activities; audited financial statements; a declaration of interests of members of its executive board, as well as those of officers and senior management; a record of attendance at board meetings; a report of investigations undertaken and their outcomes; and a report of any special report or study undertaken. In addition, the annual report, or parts of it, can be used as a valuable education and promotional tool, as was discussed in Part I of this Guide.

- *The outcomes of investigations should be made known to the body being investigated and to the public.*

As noted in Part I above, the minority ombudsman institution may have a range of investigatory and monitoring functions. To the extent that it undertakes investigations, the outcomes of those investigations should be made known to the body or bodies being investigated promptly, and in situations where the investigation came about as a result of an individual complaint, also to the complainant. Whenever the institution has made a finding or decision, it should provide a full written account of its reasons, and a summary of the facts before it (except where confidentiality, discussed below, requires the protection of information or identities). The wider public will have an interest in such investigations, and therefore the outcomes of investi-

gations should be made known to the public. The institution should make available information as to how further details about investigations can be accessed. The institution may also conduct special reports or studies, and such reports or studies should be provided to all those having an interest in them.

- *The ombudsman's operating procedures and regulations, particularly for complaint investigations, should be made public.*

The operations of the minority ombudsman institution should be transparent. There are several aspects to transparency. First, the operating policies and rules of the institution must be defined, and must be made available to those who deal with it as well as to the broader public. It is particularly important that its procedures with respect to investigations of complaints made by the public against public bodies are clear and understandable. Its rules and procedures with respect to staffing and to the awarding of contracts and funding should similarly be clear and understandable.

- *Reports and the outcomes of investigations should be made public and the ombudsman should have a media and dissemination policy, including dissemination to minority media.*

“Within the framework of its operation, the national institution shall ... address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.”

Paris Principles, Principle C(3).

The second aspect to transparency is that the minority ombudsman institution should report to interested parties and to the wider public on the conduct of its activities. As a public body funded out of tax revenues, the minority ombudsman institution should also be accountable to the broader public. Thus, annual reports, special reports, studies and information about investigations should be made known to the media and to the wider public. Clearly, the preparation of the annual report, special reports and reports on investigations promotes this goal. However, the mere preparation of such materials is not sufficient if the public is not sufficiently aware of its activities. The institution should publicize its existence by developing an advertising strategy in various media. It is particularly important that it develop a presence in minority media and a capacity to provide advertising and communicating with minority communities through the medium of their own language. A database of public bodies potentially subject to investigation, of NGOs and other organizations active with minority communities, and of schools, colleges and universities, should be developed and maintained. Key documents – particularly annual reports, summaries of relevant legal standards, and procedures for making complaints and conducting investigations – should be regularly provided. However, the potential importance of the strategic use of the media for the ombudsman's work must also be noted. The threat of publication can be used to persuade authorities to comply with recommendations, as can the strategic use of silence. All media usage must be conducted responsibly.

- *The ombudsman must ensure access to the institution in terms of information (website, language, telephone etc.) and also geographical/physical access.*

“Specialized bodies should be easily accessible to those whose rights they are intended to protect. Specialized bodies should consider, where appropriate, setting up local offices in order to increase their accessibility and to improve the effectiveness of their education and training functions.”

ECRI General Policy Recommendation No. 2, Principle 6.

Finally, in the age of the Internet, it is important that the institution develop a decent interactive website, where all of the information described above is available, with links to governmental bodies, institutions such as National Human Rights Commissions having similar remits to that of the minority ombudsman institution, relevant international organizations, and relevant NGOs. The website should be available in the languages of minorities, as well as in the official state language(s). Given all of these tasks, it is advisable that the institution has at least one full-time public relations officer.

A final aspect of transparency is the accessibility of the minority ombudsman institution to the communities it serves in terms of geographic location and for persons with disabilities. While the head office of such an institution will normally be located in the national capital, the institution should have offices in the various regions in which minority populations may live. This is particularly important in large countries, or where significant concentrations of minorities live in areas which are remote from the capital and therefore from the head office of the institution. Where regional offices have been established, it is important that the division of labour and responsibility is clearly set out to ensure that appropriate and timely information flows between the various sub-offices. The question of regional offices is also important in ensuring that the institution is representative. Similarly, the office should not be situated within or too close to government buildings as this may create an image of non-independence and make people hesitant to approach the office.

For example, the Office of the Public Defender of Georgia has regional representations outside of Tbilisi, as does the Office of the Ombudsperson in Kosovo. Regional offices of the Ombudsman are also to become operational in Macedonia.

- *Minority issues can be sensitive in nature and the ombudsman must have a policy on confidentiality and privacy of personal data.*

The minority ombudsman institution will frequently deal with information of a sensitive and confidential nature, and it is crucial that it have a policy on confidentiality. Furthermore, many jurisdictions now have legislation with respect to data protection, and the institution must ensure that its processes and procedures, particularly those relating to the conduct of investigations, adhere to such legislation. It is important that staff be trained in such legislation, and in the institution's policies to implement it.

In investigating complaints, the institution may require and may otherwise receive private information relating to the complainant(s). Such information should not reach the public domain or, indeed, be received by the public body which is subject to the complaint. Depending on the seriousness of the allegation brought by a complainant against a public body, information concerning the identity of the complainant may need to be concealed. Without an adequate policy on the confidentiality of such personal information, the institution will not be fully trusted by the minority communities; potential complainants will be reluctant to bring complaints, and members of minority communities will be less likely to participate in fact-finding work.

In the course of its investigatory work, the institution may also come into possession of information about the work of a public body which should also not come into the public domain. Examples include information that could compromise public security or the security of the complainant or their family or community, information that could be exploited for commercial or political advantage, and information that may otherwise be classified. Also, public bodies themselves often have information of a private or confidential nature, including personal data, trade secrets, financial information and so forth. Where this sort of information comes into the hands of the minority ombudsman institution, it must also be subject to the confidentiality policy. Without an adequate policy on the confidentiality of such information, public bodies may be reluctant to work cooperatively with the institution, thereby limiting its effectiveness.

Once developed, the confidentiality policy should be publicized, so that both public bodies and members of minority communities are aware that their confidential information will be treated appropriately. Confidentiality can also be promoted by entering into confidentiality agreements with staff, and by making the breach of such agreements punishable.

- *Complaint and correspondence tracking mechanisms should be put in place.*
- *Financial monitoring must be undertaken to ensure maximum efficiency.*

As with other public sector bodies, the efficiency of operations of the minority ombudsman institution will be important. Efficiency has a number of aspects. First, as noted earlier, the institution may have a limited budget, and this will mean that all resources, including human resources, are stretched and may, in some cases, be insufficient to discharge the functions as effectively as would be desirable. It is therefore essential that the institution have good cost accounting and control mechanisms that will be able to identify not only financial and resource costs, but also use of time by staff. Only in this way can expenditures be controlled, potential overspends identified, and more efficient time allocation and management implemented.

A second aspect is the efficiency with which tasks of the institution are performed. It is important, for example, that complaints be handled expeditiously and that investigations are performed thoroughly, but also in a timely fashion. Case files should be monitored carefully, ideally by some sort of electronic tracking system, and where legislation imposes deadlines for events to take place, a diary system should be instituted. Enquiries should be dealt with quickly, and correspondence should be handled efficiently and accurately, again with a tracking system.

Given that the work of a minority ombudsman institution will tend to generate a considerable amount of paper and a range of outputs, efficient file management and data storage and retrieval systems should be developed. Investigations should be referenced in a number of ways, including by the type of complaint, the identity and nature of complainant, the identity and nature of the public body being investigated, and so forth.

- *The ombudsman should have a language policy for internal and external communication.*
- *The language policy of the minority ombudsman institution should allow persons to use the ombudsman's services in a minority language or with free services of an interpreter. This includes to approach the institution and to receive replies in a minority language.*

There may be broader minorities/minority language rights legislation within the state, which regulates language matters. Even where such legislation exists, for an ombudsman institution specializing on minority issues, it seems essential that the operational policy also specifies the language use of the office both internally and externally. As most of the national Acts of legislation establishing ombudsman institutions surveyed concern a general, traditional ombudsman without a particular minorities or minority language remit, there is no attention to the language use of the office through which the institution will carry out its work.

There are a number of considerations, which may be regulated by the language policy. First, there may be provisions with respect to the language, which is used in preparing public documentation, signage, and so forth. The policy may provide that, in addition to the official language or languages of the state, the languages of the various minority linguistic populations of the state shall be used in all public documents produced by the institution (including annual and special reports) and in the publicity materials of the institution. Given that the institution will be handling complaints and conducting investigations on behalf of minority populations, the policy may provide a right to service from the institution in the minority language spoken by users of the institution's services (regardless of whether the user can also speak the official language(s) of the state). The ability to use one's minority language in dealing with the specialized minority ombudsman institution and to receive information about the institution and its services in that language would not only enhance the legitimacy of the institution, but may be essential if the institution is to carry out its duties effectively.

With respect to the internal operations of the institution, it may be desirable to allow officers and employees to use their minority language in carrying out their duties. Again, this may enhance the reputation of the institution and may also facilitate the effective participation of members of minorities within the institution itself. However, the use of more than internal institutional working language raises a range of practical problems, which increase significantly with the number of languages involved. Where employees are unable to speak all such languages, translation facilities will be needed, both with respect to documents and for the purposes of conducting meetings, and this presents both logistical barriers and, potentially, significant costs.

More specifically, one could consider as guiding principles the strongest reading of Article 10(2) of the Framework Convention for the Protection of National Minorities, as well as Article 7(d) and the highest level of commitment spelled out in Article 10(2) and (3) of the European Charter for Regional or Minority Languages. It seems preferable that the entire communication with the office should be able to

be done in the minority language(s) present in the country. Such an approach has, in line with Article 10(4) of the Charter, implications for the employment policy of the institution and its financial resources.

Management of Relationships with Analogous Domestic Bodies



- *The ombudsman should maintain close links with other bodies or mechanisms available to assist with minority protection, however, the different jurisdiction and mandate of each body or organization must also be heeded.*

Minority rights are not a self-contained set of rights, totally distinct from other rights. Indeed, many principles relevant to the protection of minorities, such as non-discrimination, have a much wider application, and many such principles are to be found in norms, whose implementation may be overseen by other domestic bodies. Thus, with respect to many rights which a member of a minority may want to rely upon, there may be a range of enforcement options available, including courts of law, bodies such as human rights commissions, general parliamentary ombudsman institutions and specialist bodies, such as those involved in the protection of women's or children's rights. Where such options are available, conflicts might arise between the minority ombudsman institution and those other bodies as to which body has the jurisdiction/competence to deal with the matter. In some cases, the domestic legislation which creates the right may specify which body is to have primary jurisdiction/competence, but this is not always the case.

Where the domestic law is unclear, it is important that the minority ombudsman develop a set of policies for dealing with such jurisdictional issues. In general, the institution will want to maintain good relations with such other bodies, and as a starting point, it may be advisable for representatives to meet on a regular basis to discuss a range of matters of mutual concern. When, for example, the minority ombudsman institution is considering a program of research, or a topical investigation, it should consider the extent to which similar work is already going on within other bodies, and whether any possibility of joint programming exists. It may, therefore, be advisable for the minority ombudsman institution to designate a specific officer or employee as having responsibility for liaising with such other bodies, and to report regularly to the board of the institution on such matters.

With regard to the narrow issue of possible jurisdictional conflicts, whenever the minority ombudsman institution considers a complaint brought by a member of a minority community, it should determine whether the person has begun any formal legal process or lodged a similar complaint with another body. Generally, it is undesirable for the same complaint to be pursued in two or more different fora, and the institution should resist such forum shopping. So, if a decision has been rendered by another body, it would generally not be advisable for the minority ombudsman institution to investigate the same complaint in respect of the same matter, and the institution should refuse to investigate. If, on the other hand, a complaint or other process has been started in another forum but has not yet been completed, the

ombudsman institution should immediately contact that other body to see whether the complaint or legal process is still active. If the complaint or process is at an advanced stage, it is probably inappropriate for the ombudsman institution to take up the complaint; considerable resources may well have been expended in the other forum, and considerable ill will could be created should the institution decide that it, too, will investigate. If, however, the process is at an early stage, the ombudsman might indicate to the complainant that the complaint or process can be started in either forum, but not both, and could advise as to the differences which may exist between the processes and the remedies which each body may provide. Ideally, it should be left to the complainant to make a fully informed decision about the choice of forum.

9

Bringing International Standards to Bear

- *The ombudsman must keep abreast of developments in international standards and law in the minority protection field.*
- *The ombudsman should establish and maintain a library of relevant legal materials and information about domestic developments.*

The law in the area of the protection of minorities is rapidly developing. In addition to the development of new international instruments, there is huge growth in standard setting under existing instruments, particularly those of the Council of Europe. In addition to judicial decisions, the various treaty-based monitoring bodies are producing detailed reports on implementation by states of the legal norms. In addition to clarifying the content of the norms, such reports are also a valuable source of state practice, some of which is exemplary. Not surprisingly, the growth in standards and in the output of treaty bodies has also encouraged an explosion of comment, both from academics and from NGOs active in the field, and such output also enriches our understanding of the legal norms and of best practices. Finally, there is a steady growth of national and sub-national legislation and administrative practice relevant to minority issues, and this law and practice can provide a very useful source of information to minority ombudsman institutions. It is important that institutions can keep abreast of such developments, ensure that staff are adequately trained, and ensure that information relating to such developments are disseminated as broadly as possible, amongst politicians, national, local and regional governments and parliaments/councils, civil servants, domestic NGOs and other civil society organizations, including community organizations, the media, schools, colleges and universities.

A minority ombudsman institution should have a proper library. To the extent that the institution is investigating complaints and, potentially, playing any role in rendering legal decisions or participating in legal processes, the library must have all relevant legal materials, including legislation, law reports, and relevant journals. With regard to its broader roles – for example, advising governments and public bodies on legal and other developments – the institution will want to ensure

that it has copies of relevant international treaties, the outputs of treaty monitoring bodies, and academic literature in the area. The institution will also want to track developments in the domestic popular press, and should keep sets of news clipping or similar files with respect to news stories and opinion pieces relevant to its work. The range of possible material could potentially be very great and therefore difficult decisions may be forced upon the institution by limited budgets. Appointing a library committee at an early point may be advisable, and if possible, a librarian or similar coordinator should be appointed. In order to be effective, a proper database of research material should be established, preferably in electronic form.

Much information can now be obtained through online databases and mailing lists, and also directly from treaty bodies and NGOs active in the minorities and human rights fields. A good database of relevant websites should be prepared, and formal links should be established with various treaty bodies and NGOs. Similar links should also be forged with analogous institutions in other jurisdictions for the purposes of information sharing.

To the extent that the minority ombudsman institution is handling complaints or participating in legal processes, a proper case management system must be created, to ensure that complete files are maintained and can be easily accessed. Again, an information retrieval system must be created to allow researchers and field workers access to files relating to similar norms, or involving the same parties.

Training 10

- *There should be a training plan for staff of the ombudsman so that they stay abreast of national and international developments in minority protection.*

It is essential that staff of the minority ombudsman institution remain up to date on national and international developments with regard to norms which apply to minorities. Ideally, the institution would have a research officer – this position could be combined with that of the library coordinator referred to above, who would coordinate ongoing seminar programs tracking current developments. The training program should seek to draw on the expertise of institution staff but also involve expertise that is locally available, including staff of government departments – for example, justice and foreign affairs ministry lawyers – other human rights bodies and NGOs, and academics. Where there is a significant new legal development – for example, the creation of new domestic legislation, or the entry into force of a new international treaty – a special staff training session should be organized by the research officer in order to acquaint relevant staff with the development. Wherever possible, the institution should draw on expertise that could be provided by international organizations; for example, the Council of Europe generally participates in information seminars concerning Council of Europe standards.

11

Dissemination of Legal Standards

- *The ombudsman should be involved in the dissemination of information about national and international developments in minority protection to relevant government departments, organizations, schools and the media.*

It is important that the minority ombudsman institution act as an information clearing house for new international and national developments. As noted earlier, a database of governmental bodies, minority community organizations and NGOs, universities, colleges and schools, and relevant media outlets, as well as interested individuals should be kept. This database should be used to provide such bodies, organizations and persons with press releases highlighting new developments and containing information on how to contact the institution to obtain further particulars. Indeed, the institution should consider developing a regular newsletter that could be broadly circulated containing such information. A good interactive website should also be prepared, with links to relevant international bodies, organizations, and so forth. The institution should also offer regular seminars to bodies and organizations on minority issues. Finally, the institution should have a media strategy, should hold regular press conferences, and when there is a major development, such as new legislation, should publicize the development in the broadcast and print media.

The minority ombudsman can also function as a kind of databank concerning court and tribunal cases of minority rights, successful methods of proof, available data for evidence (relevant statistical and demographic data for example), data concerning public interest law firms dealing with such cases, and information concerning legal aid available for those who choose or have to choose litigation.

Cooperation with Similar Institutions in Other Jurisdictions, and International Agencies and Institutions

12

- *The ombudsman should identify minority-related international monitoring bodies or mechanisms, and international NGOs active in the minority protection field.*

In order to ensure that the minority ombudsman institution is fully appraised of international developments, it is crucial that it identifies bodies with which it should develop contacts, and that it has a strategy to ensure that such contacts are maintained.

The institution should identify all the treaty bodies created under all the international instruments to which the state is a party and all monitoring bodies of international organizations to which the state belongs which may have a minorities remit. The institution should, however, also identify treaty bodies under minorities-related instruments and monitoring bodies of international organizations of which the state is not a party. The institution should then contact such bodies, and have the institution put on all electronic and other mailing lists to ensure that it is in receipt of all information disseminated by such bodies. It should also send to such bodies any newsletter or other output of the sort described above that is produced by the institution which may be of interest or use to the treaty body.

The institution should also identify bodies with a similar remit to its own in other jurisdictions; such institutions in neighbouring countries or within the region will probably be of greatest relevance. Again, once such bodies are established, contact should be made, and mechanisms for the mutual exchange of information should be established. The institution should also identify international NGOs dealing with minority issues, and establish the same sort of contacts and information-exchange mechanisms. Finally, the institution should identify university departments, research institutes, and individual researchers who are active in the area of minorities, and ensure that contact is made with them and that links are established.

If links of the sort described above are established, it is likely that the minority ombudsman institution will begin to receive large amounts of documentation. Once again, it is essential that a library coordinator/research officer monitors such information, making sure that documents are recorded and catalogued in a manner which allows for quick and easy retrieval. Such information could also be monitored for the purposes of domestic distribution, in the manner described above, and for the purposes of identifying possible developments relevant for staff training.



PART IV



RESOURCES



Selected Literature on Ombudsman Institutions

Alvarez, Magdalena Aguilar, *El Defensor del Ciudadano* (Mexico: Universidad Nacional Autonoma de Mexico/ Comisión Nacional de Derechos Humanos, 1990).

American Bar Association, "Standards for the Establishment and Operation of Ombuds Offices" (2001), at <http://www.ombuds-toa.org/downloads/ApprABASStand.doc>.

Bizjak, Ivan, "The Role and Experience of an Ombudsman in a New Democracy", in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol. 2, 1998), 57-62.

Bizjak, Ivan "The Ombudsman and a Country's Human Rights Record (Specifics in the Countries in Transition)", at <http://www.varuh-rs.si/cgi/teksti-eng.cgi?eu99bizj>.

Bizjak, Ivan, "Effectiveness of an Ombudsman Institution", paper for Fifth UNDP International Workshop on Ombudsmen and Human Rights Institutions, Almaty, 15-17 November 1999, at <http://www.varuh-rs.si/cgi/teksti-eng.cgi?almaty2>.

Bizjak, Ivan, "Networking Between Ombudsmen and Human Rights Institutions", paper for Fifth UNDP International Workshop on Ombudsmen and Human Rights Institutions, Almaty, 15-17 November 1999, at <http://www.varuh-rs.si/cgi/teksti-eng.cgi?almaty1>.

Bizjak, Ivan "Special Features of the Ombudsman in Transitional Conditions", working paper submitted at the VIIth International Ombudsman Institute Conference, Durban, South Africa, at <http://www.varuh-rs.si/cgi/teksti-eng.cgi?durbanbi>.

Bowring, Bill, "Sergei Kovalyov: the First Russian Human Rights Ombudsman – and the Last?" in Rein Müllerson, Malgosa Fitzmaurice and Mads Andenas (eds.), *Constitutional Reform and International Law in Central and Eastern Europe* (The Hague: Kluwer Law International, 1998), 235-254.

British and Irish Ombudsman Association, "Ombudsman Schemes: Guidance for Departments", at <http://www.bioa.org.uk/BIOA-New/guide-dept/OMBUDSMAN%20SCHEMES.htm>.

Caiden, G. E. (ed.), *International Handbook of the Ombudsman*, (Westport, Connecticut: Greenwood Press, 1983).

Cardenas, Sonia "Adaptive States: The Proliferation of National Human Rights Institutions", Carr Centre for Human Rights Policy Working Paper T-01-04.

Center for the Study of Democracy, Bulgaria, "European Standards and Ombudsman Institutions in Southeast Europe" (International Conference, Sofia, 6-8 June 2002), at http://www.csd.bg/publications/lawconf/law_omb_konf_eng.pdf.

Center for the Study of Democracy, Bulgaria, “Civic Defender and Local Civic Mediators: Concept Paper and Draft Law” (April 2002), at http://www.csd.bg/publications/Ombudsman_en_web.pdf.

Christopoulos, D. and Hormovitis D. (eds.), “The Ombudsman Institution in South Eastern Europe”, Proceedings - Papers of the Workshop - The Ombudsman’s Role in South-Eastern Europe Strengthening the Rule of Law as a Step Towards European Integration, Athens (22-23 May 2003).

Council of Europe, “Making the Protection of Rights More Accessible to Citizens: The Ombudsman at Local and Regional Level” (European Conference Organized by the Congress of Local and Regional Authorities of Europe (CLRAE), Messina, 13-15 November 1997), COE Publishing Studies and Texts, No. 58.

Council of Europe, Directorate of Human Rights, “Non-Judicial Means for the Protection of Human Rights at the National Level”, (May 1998).

Council of Europe, “Conclusion of the European Ombudsmen Conference”, European Ombudsman Conference, The Role of the Ombudsman in the Protection of Human Rights, Vilnius, 5-6 April 2002, (Strasbourg, 15 April 2002).

Coussey, M., “The Effectiveness of Strategic Enforcement of the Race Relations Act 1976” in Hepple B. and Sczyzszak E. (eds.), *Discrimination and the Limits of the Law* (London: Mansell Publishing Limited, 1992), 33-49.

Danish Ministry of Foreign Affairs, “Conference Report”, Conference on the Work and Cooperation of Ombudsman and National Human Rights Institutions, Copenhagen (23-25 September 2001).

De Miranda y Torres, Fernando Alvarez, “Human Rights and their Function in the Institutional Strengthening of the Ombudsman”, in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol. 2, 1998), 146-158.

Eklundh, Claes, “The Ombudsman Specialized in Judicial Matters”, in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol. 2, 1998), 189-197.

European Commission, “The Ombudsmen against Discrimination” Seminar 19-21 September 2001, Brussels, (Strasbourg: Office for Official Publications of the European Communities, 2002).

European Commission, “Specialized Bodies to Promote Equality and/or Combat Discrimination: Final Report” (May 2002).

European Network Against Racism (ENAR), “Change the Post of Ombudsman: summary of proposal to change the post of Ombudsman for foreigners and to expand its functions establishing the post of discrimination ombudsman” (October 2000), at <http://www.enar-eu.org/en/national/finombudsman.shtml>.

European Network Against Racism (ENAR), “Fact Sheet Nr. 16”, 1 November 2002, at <http://www.enar-eu.org/en/info/Factsheet%2016%20EN.pdf>.

European Ombudsman, “What can the European Ombudsman do for you? A Guide for Citizens” (Strasbourg, European Communities, 2002) at http://www.euro-ombudsman.eu.int/guide/pdf/en/guide_en.pdf.

European Ombudsman Institute, “Der Volksanwalt und sein Umgang mit Sprachminderheiten – Erfahrungen und Aussicht”, Referate der Tagung von St. Kassian/Gadertal/Italien vom 25. und 26. September 1993.

European Parliament Directorate-General for Research, “European Ombudsman – National Ombudsmen or Similar Bodies – Comparative Tables”, Political Series (2001).

Fréjabue, E., “L’Ombudsman: un Mode Original de Règlement des Conflicts”, Thèse de Mastère dans le Collège d’Europe, Natolin (1996).

Gammeltoft-Hansen, Hans, “The Ombudsman as Non-Traditional Tool for Citizen Participation”, in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol. 2, 1998), 180-188.

Giddings, Philip, “The Ombudsman in a Changing World”, 8(6) *Consumer Policy Review* (1998), 15-38.

Gregory, Roy and Giddings, Philip, *Righting Wrongs: the Ombudsman in Six Continents* (Amsterdam: IOS Press, 2000).

Gregory, Roy, “Building an Ombudsman Scheme: Statutory Provisions and Operating Practices”, in Linda C. Reif, *The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1998), 129-168.

Gregory, Roy, “The Ombudsman Observed”, in Linda C. Reif, *International Ombudsman Yearbook* (The Hague: Kluwer Law International, 1997), 77-100.

Hepple, Bob and Szyszczak, Erika (eds.), *Discrimination and the Limits of the Law*, (London: Mansell Publishing Limited, 1992).

Hossain, Kamal et al. (eds.), *Human Rights Commissions and Ombudsman Offices: National Experiences throughout the World* (The Hague: Kluwer Law International, 2000).

Human Rights Institute (Russia), “Cooperation between the CIS Ombudsmen Institutions and the International Organizations concerning Human Rights Problems”, at <http://www.hrinstitution.ru/eng/rtr3.html>.

ILO Text, “Protecting (Im)migrants and Ethnic Minorities from Discrimination in Employment: Finnish and Swedish Experiences—Chapter 3 Sweden” (1998), at <http://www.ilo.org/public/english/protection/migrant/papers/sw-fipro/ch3.htm>.

Keij, E., “The Forthcoming European Union Enlargement and its Consequences for the Workload of the European Ombudsman within the Field of Human Rights”, thesis for the degree of Master of European Studies at the College of Europe, Natolin (2002).

Krizsán, Andrea, “Ombudsman and Similar Institutions for the Protection of Racial, Ethnic or National Minorities: The Case of Discrimination”, thesis, Political Science Department of the Central European University, Budapest (2002).

Lerner, Natan, *Minorias y Grupos en el Derecho Internacional Derechos y Discriminación*, Comisión Nacional de Derechos Humanos (Mexico: Editorial Amanunse, 1991).

Letschert, Rianne M., “Ombudsman Institutions and International Minority Rights Mechanisms”, Paper for Ombudsman Institutions and Minority Rights Workshop, European Centre for Minority Issues, Ohrid, 20-23 October 2004.

Lloyd, Marnie, “Minority Ombudsperson Project Network Conference Report”, Meeting Report, Berlin, 16-17 October 2003 (European Centre for Minority Issues, Flensburg, 2003).

- Lustgarten, L., *Legal Control of Racial Discrimination* (London: Macmillan Press, 1980).
- MacEwen M. (ed.), *Anti-Discrimination Law Enforcement. A Comparative Perspective* (Ashgate: Aldershot, 1997).
- María Crespo Allen, *European Ombudsman and National Ombudsmen or Similar Bodies: Comparative Tables* (Luxembourg: European Parliament, 2001).
- Matscher, Franz (ed.), *The Ombudsman in Europe: The Institution* (Kehl, Strasbourg, Arlington: Austrian Human Rights Institute/N.P. Engel, 1994).
- Milosavljevic, Bogoljub, *The Ombudsman – Defender of Civil Rights* (Belgrade: Centre for Antiwar Action, 2001).
- Minister President of Land Schleswig-Holstein, “Introducing the Commissioner for Minority Affairs: Cultural Diversity in Schleswig-Holstein”, Kiel, 2002, at http://landesregierung.schleswig-holstein.de/coremedia/generator/Aktueller_20Bestand/StK/Broschuere_2C_20Publikation/PDF/Cultural_20Diversity_20in_20Schleswig-Holstein.property=pdf.pdf.
- Morawa, Alexander H.E. and Lloyd, Marnie, “Ombudspersons and Minority Rights - A Sketch”, Background Paper for the Minority Ombudsperson Project, (European Centre for Minority Issues, Flensburg, 2003).
- Nilsson, Jonas, “The Ombudsperson in Kosovo and the Protection of Minorities”, *2 European Yearbook of Minority Issues 2002/3* (Leiden, Boston: Martinus Nijhoff Publishers, 2004), 691-704.
- Nilsson, Jonas, “UNMIK and the Ombudsperson Institution in Kosovo: Human Rights Protection in a United Nations ‘Surrogate State’”, *22(3) Netherlands Quarterly of Human Rights* (2004), 389-411.
- Ombudsman against Ethnic Discrimination, Sweden, “Ombudsmannen mot Etnisk Discrimination (The Ombudsman against Ethnic Discrimination) Sweden”, at http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisl/mslegln/sv_ombuds_en.pdf.
- Ombudsman for Minorities in Finland, “Report of the First Year of Operations (2002)”, at <http://www.mol.fi/vahemmistovaltuutettu/rep02eng.pdf>.
- Oosting, M. “The National Ombudsman of the Netherlands and Human Rights”, in Reif, Linda C. (ed.), *The International Ombudsman Anthology – Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1999), 317-336.
- Orton, Frank, “Evolution and Perspectives of the Institution of the Ombudsman”, in Linos-Alexander Sicilianos and Christine Bourloyannis-Vrailas (eds.), *The Prevention of Human Rights Violations* (The Hague: Kluwer Law International, 2001), 225-231.
- OSCE/ODIHR, “Ombudsman and Human Rights Protection Institutions in OSCE Participating States”, Background Paper, OSCE Human Dimension Implementing Meeting (October 1998).
- Pannick D., “Class Action and Discrimination Law” *New Community* Vol. X. No.1., 1982, 16-26.
- PLS Ramboll Management, “Specialised Bodies to Promote Equality and/or Combat Discrimination”, Final Report, May 2002.

Reif, Linda C., *The Ombudsman, Good Governance and the International Human Rights System* (Leiden, Boston: Martinus Nijhoff Publishers, 2004).

Reif, Linda C., "The Promotion of International Human Rights Law by the Office of the Ombudsman", in Reif, Linda C. (ed.), *The International Ombudsman Anthology – Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1999), 271-316.

Reif, Linda C., *The Ombudsman Concept* (Edmonton: International Ombudsman Institute, 1995).

Robertson, John, "Setting Up an Ombudsman Office", in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol.1, 1997), 17-36.

Robertson, John, "The Ombudsman Around the World", in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol. 2, 1998), 112-128.

Ruzindana, A., "The Role of the Ombudsman in Enforcing Accountability", in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol. 3, 1999), 180-186.

Sasse, Gwendolyne, "Chairman's Conclusions of the Consultation on Ombudspersons and Minority Issues in Europe held at ECMI on 4 September 2002", Meeting Report, (European Centre for Minority Issues, Flensburg, 2002).

Satyanand, Judge Anand, "The Ombudsman Concept and Human Rights Protection, (International Ombudsman Institute, Occasional Paper #68, January 1999).

Seneviratne, Mary, *Ombudsmen: Public Services and Administrative Justice* (London: Butterworths, 2002).

Seneviratne, Mary, *Ombudsmen in the Public Sector* (Buckingham, Philadelphia: Open University Press, 1994).

UNDP, OSCE, CoE and Polish Ombudsman's Office, "Human Dimension Seminar on Ombudsman and National Human Rights Protection Institutions: Consolidated Summary", Warsaw, 25-28 May 1998.

United States Ombudsman Association, "Model Ombudsman Act for State Governments", February 1997, at <http://usombudsman.org/References/modelombudact.htm>.

Vangansuren, Ulziibayar, *The Institution of the Ombudsman in the Former Communist Countries* (Washington, International Foundation for Election Systems, 2002).

Various, Special Focus Section "Ombudsman Institutions", in *4 European Yearbook of Minority Issues 2004/5* (Leiden, Boston: Martinus Nijhoff Publishers, 2006 forthcoming).

Various, Expert Review Mission on Latvian National Human Rights Office and Ombudsman Functions in Latvia 3-11 April 2001, "Considerations and Recommendations" (Final Report, 22 May 2001), at http://www.un.lv/down/undp_publ/omb/omb_e.pdf.

Von Tigerstrom, Barbara, "The Role of the Ombudsman in Protecting Economic, Social and Cultural Rights", in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol. 2, 1998), 3-62.

Wadstein, Margareta, "The Role of the Ombudsman in the Enforcement of Non-Discrimination Law", in Loenen, Titia and Rodrigues, Peter R. (eds.), *Non-Discrimination Law: Comparative Perspectives*, (The Hague, London, Boston: Kluwer Law International, 1999), 353-364.

Warrington, Edward, "The Ombudsman's Oracle Critic, Counsellor, Champion: Comparative Study of Ombudsman Reports", in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol. 3, 1999), 32-68.

Waters, Christopher, "Human Rights in an international protectorate: Kosovo's Ombudsman", in *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, Vol. 4, 2000), 141-165.

Selected Texts on the Scope and Content of Minority Rights

Akermark, A. S., *Justifications of Minority Protection in International Law* (The Hague: Kluwer Law International, 1997).

Benoît-Rohmer, F., *The Minority Question in Europe: towards a coherent system of protection for national minorities* (Council of Europe Publishing, 1996).

Henrard, K., *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights, and the Right to Self-Determination* (Leiden, Boston: Martinus Nijhoff Publishers, 2000).

Loenen, T. and Rodrigues, P. R. (eds.), *Non-discrimination Law: Comparative Perspectives* (The Hague: Kluwer Law International, 1999).

Pentassuglia, G., *Minorities in International Law: An introductory study* (Council of Europe Publishing, 2002).

Raikki, J. (ed.), *Do we Need Minority Rights? Conceptual Issues* (Kluwer Academic Publishers, 1996).

Sigehart, P., *The International Law of Human Rights* (Oxford: Clarendon Press, 1993).

Sigler, J. A., *Minority Rights: A Comparative Perspective* (Greenwood Press, 1983).

Thornberry, P. and Martín Estébanez, M. A., *Minority Rights in Europe: A review of the works and standards of the Council of Europe* (Council of Europe Publishing, 2004).

Thornberry, P., *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1991).

Weller, M. (ed.), *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford University Press, 2005 forthcoming).

Selected Relevant Institutions and Websites

Center for the Study of Democracy (CSD), Bulgaria
<http://www.csd.bg/en/ombudsman>

CSD Ombudsman Information Network
http://www.anticorruption.bg/ombudsman/index_eng.htm

Centre for Combating Ethnic Discrimination, Norway
<http://www.smed.no>

Centre for Equal Opportunities and Opposition to Racism, Belgium
<http://www.antiracisme.be>

Commission for Racial Equality, United Kingdom
<http://www.cre.gov.uk>

Council of Europe, European Commission against Racism and Intolerance
http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/

Danish Institute for Human Rights
<http://www.humanrights.dk>

Danish Institute for Human Rights,
Complaints Committee for Ethnic Equal Treatment
<http://www.humanrights.dk/departments/complaint/>

Equality Commission for Northern Ireland
<http://www.equalityni.org>

Equal Treatment Commission, The Netherlands
<http://www.cgb.nl>

Eunomia Project: Promotion of Ombudsperson Institutions in Southeastern Europe

http://www.synigoros.gr/eunomia/en_index.htm

European Centre for Minority Issues, Germany, Ombudspersons and Minority Issues

<http://www.ecmi.de/doc/Ombudsman%20web/>

European Ombudsman Institute

http://members.tirol.com/eoi/uk/startseite_uk.htm

Federal Government Commissioner for Matters related to Repatriates and National Minorities in Germany

http://www.bmi.bund.de/Internet/Navigation/DE/Ministerium/Beauftragte/BeauftragterFuerAussiedler/beauftragterFuerAussiedler__node.html

German Institute for Human Rights

http://www.institut-fuer-menschenrechte.de/webcom/show_article.php/_c-476/_lkm-653/i.html

International Ombudsman Institute

<http://www.law.ualberta.ca/centres/ioi/>

National Human Rights Institutions Forum

<http://www.nhri.net/>

Ombudsman for Minorities, Finland

<http://www.mol.fi/vahemmistovaltuutettu/ombudsmaneng.html>

Parliamentary Commissioner for the National and Ethnic Minorities Rights, Hungary

<http://www.obh.hu/nekh/en/index.htm>

Swedish Ombudsman for Ethnic Discrimination

<http://www.do.se>

Swiss Federal Commission Against Racism

<http://www.edi.admin.ch/ekr/index.html?lang=de>

Selected Relevant Legislation and International Documents on Minority Rights and Ombudsman Institutions

CoE	Council of Europe
CoE Rec 1615 on the ombudsman	Council of Europe Parliamentary Assembly Recommendation 1615 (2003) on the Institution of Ombudsman, 8 September 2003
CoE Rec (97)14 on NHRIs	Council of Europe Committee of Ministers Recommendation No. R(97)14 30 September 1997 to Member States on the Establishment of Independent National Human Rights Institutions
CoE Res (85)8 on cooperation	Council of Europe Committee of Ministers Resolution (85)8 on Cooperation between the Ombudsmen of Member States and between them and the Council of Europe 23 September 1985
CoE Rec (85)13 on the ombudsman	Council of Europe Committee of Ministers Recommendation (85)13 23 September 1985 to Member States on the Institution of the Ombudsman
ECRI Rec. No. 2	European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, adopted 13 June 1997
ECRI Rec. No. 7	European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 7: on national legislation to combat racism and racial discrimination, adopted 13 December 2002
FCNM	Council of Europe Framework Convention for the Protection of National Minorities, adopted 1 February 1995, entered into force 1 February 1998, ETS No. 157
Language Charter	European Charter for Regional or Minority Languages, adopted 5 November 1992, entered into force 1 March 1998, ETS No. 148
PACE Recommendation 1201	Parliamentary Assembly of the Council of Europe, Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights, 1 February 1993

EU	European Union
EC Council Directive on equal treatment	EC Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
EC Council Directive on equal treatment in employment	EC Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
EU Charter	Charter of Fundamental Rights of the European Union, (2000/C 364/01)
OSCE	Organisation for Security and Cooperation in Europe
Hague Recommendations	Hague Recommendations Regarding the Education Rights of National Minorities, October 1996, commissioned by the OSCE High Commissioner on National Minorities
Lund Recommendations	Lund Recommendations on the Effective Participation of National Minorities in Public Life, September 1999, commissioned by the OSCE High Commissioner on National Minorities
Media Guidelines	Guidelines on the Use of Minority Languages in the Broadcast Media, October 2003, commissioned by the OSCE High Commissioner on National Minorities
Oslo Recommendations	Oslo Recommendations Regarding the Linguistic Rights of National Minorities, February 1998, commissioned by the OSCE High Commissioner on National Minorities
UN	United Nations
CERD	International Convention on the Elimination of All Forms of Racial Discrimination, concluded 7 March 1966, entered into force 4 January 1969, 660 UNTS 195
ICCPR	International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171
Paris Principles	Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights ("Paris Principles"), endorsed by the Commission on Human Rights in March 1992 Res 1992/54 and by UN General Assembly Resolution A/Res/48/134 of 20 December 1993
UN Decl. Min.	Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the UN General Assembly 18 December 1992, GA Res. 47/135

European Commission against Racism and Intolerance (ECRI)

General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, adopted 13 June 1997

The European Commission against Racism and Intolerance (ECRI):

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, inter alia, to formulate general policy recommendations to member States;

Taking into account Resolution 48/134 adopted by the General Assembly of the United Nations on 20 December 1993 on National Institutions for the Promotion and Protection of Human Rights;

Taking into account also the fundamental principles laid down at the first International Meeting of the National Institutions for the Promotion and Protection of Human Rights held in Paris from 7-9 October 1991 (known as the “Paris Principles”);

Recalling the different Resolutions adopted at the first and second European meetings of National Institutions for the Promotion and Protection of Human Rights, held respectively in Strasbourg on 7-9 November 1994 and in Copenhagen on 20-22 January 1997;

Taking into account Recommendation N° R (85) 13 of the Committee of Ministers on the institution of the Ombudsman;

Taking also into account work carried out by the Steering Committee for Human Rights (CDDH) relating to the establishment of Independent National Human Rights Institutions;

Emphasising that combating racism, xenophobia, antisemitism and intolerance forms an integral part of the protection and promotion of fundamental human rights;

Recalling the proposal of ECRI to reinforce the non-discrimination clause (Article 14) of the European Convention on Human Rights;

Profoundly convinced that everyone must be protected against discrimination based on race, colour, language, religion or national or ethnic origin or against discrimination which might stem indirectly from the application of the law in these areas;

Convinced of the necessity of according the highest priority to measures aiming at the full implementation of legislation and policies intended to combat racism, xenophobia, antisemitism and intolerance;

Recalling that an effective strategy against racism, xenophobia, antisemitism and intolerance resides to a large extent on awareness-raising, information and education of the public as well as on the protection and promotion of the rights of individuals belonging to minority groups;

Convinced that specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level can make a concrete contribution in a variety of ways to strengthening the effectiveness of the range of measures taken in this field and to providing advice and information to national authorities;

Welcoming the fact that such specialised bodies have already been set up and are functioning in several member States;

Recognising that the form such bodies might take may vary according to the circumstances of member States and may form part of a body with wider objectives in the field of human rights generally;

Recognising also the need for governments themselves to provide information and to be accessible to specialised bodies and to consult them on matters relevant to their functions;

recommends to the governments of member States:

1. to consider carefully the possibility of setting up a specialised body to combat racism, xenophobia, antisemitism and intolerance at national level, if such a body does not already exist;
2. in examining this question, to make use of the basic principles set out as an appendix to this recommendation as guidelines and a source of inspiration presenting a number of options for discussion at national level.

Appendix to ECRI general policy recommendation N° 2 Basic principles concerning specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level

Chapter A: The statutes establishing specialised bodies

Principle 1 Terms of reference

1. Specialised bodies should be given terms of reference which are clearly set out in a constitutional or other legislative text.
2. The terms of reference of specialised bodies should determine their composition, areas of competence, statutory powers, accountability and funding.

Chapter B: Alternative forms of specialised bodies

Principle 2

1. According to the legal and administrative traditions of the countries in which they are set up, specialised bodies may take different forms.
2. The role and functions set out in the above principles should be fulfilled by bodies which may take the form of, for example, national commissions for racial equality, ombudsmen against ethnic discrimination, Centres/Offices for combating racism and promoting equal opportunities, or other forms, including bodies with wider objectives in the field of human rights generally.

Chapter C: Functions and responsibilities of specialised bodies

Principle 3

Subject to national circumstances, law and practice, specialised bodies should possess as many as possible of the following functions and responsibilities:

- a. to work towards the elimination of the various forms of discrimination set out in the preamble and to promote equality of opportunity and good relations between persons belonging to all the different groups in society;
- b. to monitor the content and effect of legislation and executive acts with respect to their relevance to the aim of combating racism, xenophobia, antisemitism and intolerance and to make proposals, if necessary, for possible modifications to such legislation;
- c. to advise the legislative and executive authorities with a view to improving regulations and practice in the relevant fields;
- d. to provide aid and assistance to victims, including legal aid, in order to secure their rights before institutions and the courts;
- e. subject to the legal framework of the country concerned, to have recourse to the courts or other judicial authorities as appropriate if and when necessary;
- f. to hear and consider complaints and petitions concerning specific cases and to seek settlements either through amicable conciliation or, within the limits prescribed by the law, through binding and enforceable decisions;
- g. to have appropriate powers to obtain evidence and information in pursuance of its functions under f. above;
- h. to provide information and advice to relevant bodies and institutions, including State bodies and institutions;
- i. to issue advice on standards of anti-discriminatory practice in specific areas which might either have the force of law or be voluntary in their application;
- j. to promote and contribute to the training of certain key groups without prejudice to the primary training role of the professional organisations involved;
- k. to promote the awareness of the general public to issues of discrimination and to produce and publish pertinent information and documents;
- l. to support and encourage organisations with similar objectives to those of the specialised body;
- m. to take account of and reflect as appropriate the concerns of such organisations;

Chapter D: Administration and functioning of specialised bodies

Principle 4 Composition

The composition of specialised bodies taking the form of commissions and the like should reflect society at large and its diversity.

Principle 5 Independence and accountability

1. Specialised bodies should be provided with sufficient funds to carry out their functions and responsibilities effectively, and the funding should be subject annually to the approval of parliament.
2. Specialised bodies should function without interference from the State and with all the guarantees necessary for their independence including the freedom to appoint their own staff, to manage their resources as they think fit and to express their views publicly.
3. Specialised bodies should independently provide reports of their actions on the basis of clear and where possible measurable objectives for debate in parliament.
4. The terms of reference of specialised bodies should set out clearly the provisions for the appointment of their members and should contain appropriate safeguards against arbitrary dismissal or the arbitrary non-renewal of an appointment where renewal would be the norm.

Principle 6 Accessibility

1. Specialised bodies should be easily accessible to those whose rights they are intended to protect.
2. Specialised bodies should consider, where appropriate, setting up local offices in order to increase their accessibility and to improve the effectiveness of their education and training functions.

Chapter E: Style of operation of specialised bodies

Principle 7

1. Specialised bodies should operate in such a way as to maximise the quality of their research and advice and thereby their credibility both with national authorities and the communities whose rights they seek to preserve and enhance.
2. In setting up specialised bodies, member States should ensure that they have appropriate access to governments, are provided by governments with sufficient information to enable them to carry out their functions and are fully consulted on matters which concern them.
3. Specialised bodies should ensure that they operate in a way which is clearly politically independent.

Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (“Paris Principles”)

Endorsed by the Commission on Human Rights in March 1992 Resolution 1992/54 and by UN General Assembly Resolution A/Res/48/134 of 20 December 1993

The General Assembly,

Recalling the relevant resolutions concerning national institutions for the protection and promotion of human rights, notably its resolutions 41/129 of 4 December 1986 and 46/124 of 17 December 1991 and Commission on Human Rights resolutions 1987/40 of 10 March 1987, 1988/72 of 10 March 1988, 1989/52 of 7 March 1989, 1990/73 of 7 March 1990, 1991/27 of 5 March 1991 and 1992/54 of 3 March 1992, and taking note of Commission resolution 1993/55 of 9 March 1993,

Emphasizing the importance of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments for promoting respect for and observance of human rights and fundamental freedoms,

Affirming that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards,

Convinced of the significant role that institutions at the national level can play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Recognizing that the United Nations can play a catalytic role in assisting the development of national institutions by acting as a clearing-house for the exchange of information and experience,

Mindful in this regard of the guidelines on the structure and functioning of national and local institutions for the promotion and protection of human rights endorsed by the General Assembly in its resolution 33/46 of 14 December 1978,

Welcoming the growing interest shown worldwide in the creation and strengthening of national institutions, expressed during the Regional Meeting for Africa of the World Conference on Human Rights, held at Tunis from 2 to 6 November 1992, the Regional Meeting for Latin America and the Caribbean, held at San José from 18 to 22 January 1993, the Regional Meeting for Asia, held at Bangkok from 29 March to 2 April 1993, the Commonwealth Workshop on National Human Rights Institutions, held at Ottawa from 30 September to 2 October 1992 and the Workshop for the Asia and Pacific Region on Human Rights Issues, held at Jakarta from 26 to 28 January 1993, and manifested in the decisions announced recently by several Member States to establish national institutions for the promotion and protection of human rights,

Bearing in mind the Vienna Declaration and Programme of Action, in which the World Conference on Human Rights reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information and in education in human rights,

Noting the diverse approaches adopted throughout the world for the promotion and protection of human rights at the national level, emphasizing the universality, indivisibility and interdependence of all human rights, and emphasizing and recognizing the value of such approaches to promoting universal respect for and observance of human rights and fundamental freedoms,

1. Takes note with satisfaction of the updated report of the Secretary-General, prepared in accordance with General Assembly resolution 46/124 of 17 December 1991;
2. Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership and their independence;
3. Encourages Member States to establish or, where they already exist, to strengthen national institutions for the promotion and protection of human rights and to incorporate those elements in national development plans;
4. Encourages national institutions for the promotion and protection of human rights established by Member States to prevent and combat all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;
5. Requests the Centre for Human Rights of the Secretariat to continue its efforts to enhance cooperation between the United Nations and national institutions, particularly in the field of advisory services and technical assistance and of information and education, including within the framework of the World Public Information Campaign for Human Rights;
6. Also requests the Centre for Human Rights to establish, upon the request of States concerned, United Nations centres for human rights documentation and training and to do so on the basis of established procedures for the use of available resources within the United Nations Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights;
7. Requests the Secretary-General to respond favourably to requests from Member States for assistance in the establishment and strengthening of national institutions for the promotion and protection of human rights as part of the programme of advisory services and technical cooperation in the field of human rights, as well as national centres for human rights documentation and training;
8. Encourages all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of such national institutions;
9. Affirms the role of national institutions as agencies for the dissemination of human rights materials and for other public information activities, prepared or organized under the auspices of the United Nations;
10. Welcomes the organization under the auspices of the Centre for Human Rights of a follow-up meeting at Tunis in December 1993 with a view, in particular, to examining ways and means of promoting technical assistance for

the cooperation and strengthening of national institutions and to continuing to examine all issues relating to the question of national institutions;

11. Welcomes also the Principles relating to the status of national institutions, annexed to the present resolution;

12. Encourages the establishment and strengthening of national institutions having regard to those principles and recognizing that it is the right of each State to choose the framework that is best suited to its particular needs at the national level;

13. Requests the Secretary-General to report to the General Assembly at its fiftieth session on the implementation of the present resolution.

Annex

Principles relating to the status of national institutions

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Contributors

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Dr Kristin Henrard is a senior lecturer at the University of Groningen where she teaches human rights, refugee law and constitutional law. She graduated from the Catholic University of Leuven, Belgium magna cum laude in 1994 and obtained an LL.M. degree at Harvard Law School in 1995, specializing in human rights and humanitarian law. She took her doctorate at the Catholic University of Leuven in 1999. She also worked at the Constitutional Court of South Africa as researcher for Judge Kriegler and monitored the South African constitutional negotiations in 1996 for the Flemish Government. Her main publications relate to human rights and minority protection. Kristin Henrard is managing editor of the Netherlands International Law Review, member of the international advisory board of the Global Review of Ethnopolitics, chair of a working group on the political participation of minorities and country specialist on South Africa for Amnesty International - Dutch Section.

Dr Andrea Krizsán has been a Research Fellow at the Center for Policy Studies of the Central European University, Budapest, since 2002. She works as a researcher on projects related to gender mainstreaming, disability discrimination, minority ombudsman institutions and ethnic monitoring. She is the group mentor for the Equal Opportunity Policy group of the International Policy Fellowship Program of the Open Society Institute. Her PhD, written at the Political Science Department of the Central European University, was about anti-discrimination policy and the role of the minority ombudsman in enforcing such policies. She has published in English and Hungarian on minority policies, anti-discrimination policy and minority ombudsman institutions.

Marnie Lloyd holds a B.A. and a first class LL.B.(Hons) from Victoria University of Wellington, New Zealand. She is a qualified barrister and solicitor of New Zealand. In addition to her legal practice, she has obtained a European Masters in International Humanitarian Assistance from the Ruhr University, Bochum, Germany and has since focused on minority issues in her work. At ECMI, she heads the Ombudspersons and Minority Issues Network Project and leads workshops at project training events.

Dr Birgitte Kofod Olsen is Head of the National Department of the Danish Institute of Human Rights, Copenhagen, where she is responsible for the Institute's activities on protection and promotion of human rights and equal treatment in Denmark. She works as an external senior lecturer in law and philosophy at the University of Copenhagen, Faculty of Law, where she graduated in 1991 and obtained her PhD degree in 1998 with a thesis on identification technology and data protection. Her fields of expertise encompass minority rights, civil and political rights, anti-discrimination and equal treatment, as well as the functioning of national human rights institutions. She is involved in a number of projects on the development of methodologies applicable in a human rights and discrimination context, including assessments of compliance with the UN Paris Principles.

Alan Phillips has served as the UK Expert on Council of Europe treaty monitoring mechanisms and as the Vice President of the Advisory Committee for the Framework Convention on the Protection of National Minorities. He has also served as human rights/minority rights adviser for several other intergovernmental and nongovernmental organisations. Previously he was the Executive Director of Minority Rights Group International.

The European Centre for Minority Is-

The European Centre for Minority Issues (ECMI) advances majority-minority relations in the wider Europe through action, research and documentation. It supports the stabilization of areas of ethnopolitical tension and conflict, contributes to the strengthening of relevant legislation and best practices in governance and enhances the capacity of civil society actors and governments to engage with one another in a constructive and sustainable way. It serves European governments and regional intergovernmental organizations as well as non-dominant groups in the European area. The Centre also supports the academic community, the media and the general public through the timely provision of information and analysis.

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