



**Droits et Démocratie
Rights & Democracy**

Centre international des droits de la personne et du développement démocratique
International Centre for Human Rights and Democratic Development

**THE ROLE OF THE OMBUDSMAN
IN PROMOTING HUMAN RIGHTS AND DEMOCRACY**

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"Evolution of the Ombudsman [1809-2009]: A Rich History, A Promising Future"

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ABSTRACT: Ombudsman's offices and other national human rights institutions are essential for reducing the wide gap that sometimes exists between the formal adherence of states to international human rights agreements and the actual human rights practices of those states. In the pursuit of this goal, these institutions contribute to building links between the state and its citizens, and are central tools for strengthening the capacity of state and civil society organizations, as well as the protection and promotion of human rights. The international donor community should place a premium on building strong Ombudsman's Offices and other National Human Rights Institutions as a means to promote and protect human rights and democracy.

CHECK AGAINST DELIVERY

I would like to begin by thanking Ian Darling for his kind introduction and the International Ombudsman Association and its partners for organizing this conference and for inviting me to speak today.

I am here to speak to you about the special role that the state institution of the Ombudsman, and its cousin the Human Rights Commission, can play in the promotion and protection of human rights in developing countries.

The struggle for human rights has shifted in recent years. Since the end of World War II, the nations and citizens of the world have laboured tirelessly to define the obligations that each state has towards its citizens, and in places where it has jurisdiction. These norms, codified in human rights treaties and celebrated in conferences and summits, have provided hope to countless individuals and peoples around the globe.

Every day, citizens the world over are using the words inscribed in the texts of the International Bill of Human Rights in their fight against oppression: they are the weapon of choice by democrats and human rights defenders in the face of guns and mortar, and other forms of oppression.

Advances have been made which cannot be taken away in the definition of universal human rights norms. But significant challenges lie ahead. The human rights community celebrated the 60th anniversary of the Universal Declaration of Human Rights last year by highlighting some of these challenges. Primary among these: we must now turn the words of human rights into actions.

We need to give effect to the human rights, that in too many corners of the globe, are merely words on paper, unknown to those they are intended to protect, and unheeded by those who are obliged to respect them.

I returned from Afghanistan this week, where I met with women struggling to accommodate their universal human rights with local traditions. After only eight years since the fall of the Taliban, women are now elected members of Parliament; they own businesses, run ministries and vote in elections.

But the murder of prominent Afghan women's rights activist Sitara Achakzai outside her Kandahar home on Sunday is a brutal reminder of the dangers Afghan women and girls continue to face on a daily basis. Coming on the heels of the international outcry over Afghanistan's Shia Personal Status Law, it comes as little surprise that many in Canada and elsewhere are starting to wonder what, if anything, our continuing support for the rights of Afghan women can realistically achieve.

Their struggle, and by necessity our collective struggle, is to ensure that the international human rights norms that Afghan women aspire to claim as their own are enforced.

National Human Rights Institutions, whether Ombudsman or Human Rights Commissions, are essential to this human rights struggle: to bridge the gap that exists between the formal adherence of states to international human rights agreements and the actual human rights practices of those states.

What I hope to do today is tell you how.

In 1988, Rights & Democracy was created by the Parliament of Canada with a mandate to promote human rights and the development of democracy on the international stage. For 20 years we have been working with local partners in over 30 countries to bridge that gap: between the rights on paper, and the rights in practice.

To implement our mandate, we have developed a unique and innovative approach to democratic development whereby each citizen's potential to realize his or her human rights is paramount.

Our citizen-centered approach aims to maximize the individual's potential to enjoy and exercise his/her rights, and attempts to affect change in the socio-political processes and democratic institutions that can lead to this. Respect for human rights make a life of dignity and meaning possible for each citizen, and maximizes human potential through the active participation of citizens in controlling their own destiny.

Of fundamental importance to the realization of these rights is the respect for the rule of law. This is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws. These laws must be adopted and enforced in accordance with established procedural steps that are referred to as due process of law. The institutions that prop up the rule of law provide, among other things, protection against human rights violations and redress for those whose rights have been violated.

These institutions include the judiciary, the police, the correctional system, as well as National Human Rights Institutions.

National Human Rights Institutions act as the real institutional bridge between the international and normative components of human rights and the concrete implementation of these rights in a country.

They can take many forms, from human rights commissions, specialized tribunals, or Ombudsman and they are quite new in the developing world. The importance of these institutions has only recently been getting the attention as key elements of the protection and promotion of human rights.

This engagement peaked in 1993 when the UN General Assembly adopted a set of principles guiding the status, mandate and operations of National Human Rights Institutions, known as the Paris Principles.

The Paris Principles outline a number of important standards, but in my view, there are three that are worthy of special mention:

- First, National Human Rights Institutions, while state institutions, must be independent, and be perceived as being independent, from the state; and they must be genuinely plural in nature, inclusive of various sectors of society.
- Second, adequate funding is essential. For institutions to be truly independent of the government, they must not be subject to financial control which might affect this independence.
- Third, National Human Rights Institutions must also be given as broad a mandate as possible for the promotion and protection of human rights.

The special place of the National Human Rights Institution within society positions it to play a key role in a number of areas:

- They submit to government, parliament or other competent body opinions, recommendations, proposals, and reports on any matter concerning the protection and promotion of human rights. This includes on legislative or administrative provisions intended to preserve and extend the protection of human rights.
- They promote the ratification, implementation and reporting on international human rights instruments to the relevant UN bodies.
- They receive human rights complaints and seek justice, through amicable settlement and mediation, informing petitioners of their rights, including remedies, as well as hearing the complaints or assisting in presenting these to competent legal authorities.
- They promote human rights and engage in human rights education activities which raise awareness among the population and decision makers.

For this to happen, National Human Rights Institutions must satisfy a number of conditions, especially in countries emerging from conflict or with weak democratic governance:

- They must build strong relationships between government authorities as well as the human rights community in civil society, and other non-state actors.
- They must demonstrate the political will to denounce grave violations but also engage with different actors in finding solutions to the violations.
- They must cooperate and monitor judicial decisions, detain investigatory powers, but cannot become a substitute for the courts.
- They must play a leading role in ensuring accountability for human rights violations and leading the charge against impunity.

- They must be very active in human rights training and documentation of human rights violations.
- They must act as mechanisms by which members of the public can participate in the regulation of the conduct of public administration, especially with regards to transparency, accountability and fairness.
- They must seek to expand their reach to the protection of vulnerable sectors of the population, including women, children, disabled persons, indigenous peoples and ethnic minorities.
- They must contribute to the national debate on the protection of human rights, including judicial, police and correctional reform.
- They must promote the interdependence and indivisibility of human rights, and thus engage in work on protecting economic, social and cultural rights.
- They must be pluralist and representative of society in their structure and composition.

It is, in my view, a primary responsibility for National Human Rights Institutions to ensure that governments are kept informed of their international human rights obligations; that they provide assistance to the government in fulfilling its obligations; and that they hold the government to account when these obligations go unfulfilled.

This is especially the case in emerging democracies or in countries undergoing post-conflict transitions. National Human Rights Institutions can play a key role in filling the void which exists as a result of a weak or non-existent institutional basis for the respect of human rights.

These institutions have a mission to be a vehicle through which a state wakes up and takes its international obligations seriously on its own territory. This is particularly true when democratic rights such as freedom of expression and association are at risk.

Despite the self-evident importance of National institutions to the construction of democratic societies based on the respect for human rights, they have not reached their full potential. Most National Human Rights Institutions were created following internal and international pressure, often with only the extremely reluctant consent of the states in question. Therefore, many of the mandates of National Institutions, and the capacity of these institutions to implement their mandates, fall well short of the ideals I presented earlier.

Countries emerging from protracted conflict, where human rights violations were widespread, are precisely where National Institutions are needed, but are also where entrenched interests will resist calls for justice and accountability for past crimes, a key function of an independent National Institution.

It is in these cases that our support must be offered. The expertise embodied in the Human Rights Commissions and Ombudsmans in Canada can play a pivotal role in strengthening their counterparts in developing countries. As an essential component of

building societies based on the rule of law and the respect for human rights, National Institutions must be key recipients and beneficiaries of official development assistance.

Rights & Democracy has begun working to strengthen the mandates and capacities of National Human Rights Institutions in our priority countries. I will highlight two examples of our work:

1. Support for the establishment of a Human Rights Commission in South Sudan
2. Support for the strengthening of the Office of Ombudsman in Haiti

Sudan is one of the world's worst human rights disasters. Africa's largest country has been ruled for over 20 years by an elite cadre who seized power in a coup d'état in 1989. In 2005, the Sudanese government and the Sudan People's Liberation Movement signed the Comprehensive Peace Agreement bringing an end to more than two decades of civil war in which more than two million people died. In so doing, they agreed not only to a ceasefire, but also to a series of reforms designed to bring democratic transformation to Sudan.

One of these reforms was the creation of a National Human Rights Commission, as well as a separate Human Rights Commission in Southern Sudan. While the former has not been established, the latter was enabled through legislation early this year. To support this nascent institution in an area of the world where human rights violations have been the norm, Rights & Democracy provided equipment, technical assistance as well as human rights training to the recently named Commissioners.

Following a brutal military government in Haiti from 1991 to 1994, the reinstated democratic government established Haiti's national human rights institution, the Office du Protecteur du Citoyen (OPC), by a presidential decree on September 12, 1995.

The human rights situation in which the OPC operates can be described as extremely poor. The Haitian state is incapable of ensuring the respect of even the most basic rights and is often directly responsible for human rights violations that plague this nation of 8 million people.

The police force numbers only around 8000 and is largely ineffectual or corrupt, notwithstanding recent improvements in police vetting and training. The judiciary is ill-equipped to handle the number and complexity of the cases that are presented to it, and judges have demonstrated a high level of partisanship. The correctional system is strained as there are not enough jails to support a growing prison population, and prison conditions do not meet international human rights standards. As a result, human rights are violated throughout the penal chain, with arbitrary arrest, prolonged pre-trial detention and a lack of access to justice among the main human rights challenges facing the justice system in Haiti.

When I travelled to Port-au-Prince, Haiti in November of last year, I visited a prison for women and witnessed first hand the deplorable conditions under which these women live. A strong Ombudsman could play an important role in monitoring prison conditions, and

in reducing cases of prolonged pre-trial detention by seeking alternatives to imprisonment for petty crimes.

Rights & Democracy is therefore building the capacity of the OPC to contribute to judicial reform debates in Haiti, to monitor the correctional system, and to work with civil society organizations on preparing Haiti's human rights report to the UN Human Rights Council in Geneva.

The human rights situations in Sudan and Haiti, and in many similar countries, cry out for strong independent institutions that can contribute to the promotion and protection of human rights.

We have seen what Human Rights Commissions and Ombudsman have accomplished in our countries. It is time for us to use our knowledge and experience to help our partners in the south establish National Institutions of their own. By doing this, we will no doubt make a lasting contribution to translating the words of international human rights – the promise – into reality.

Thank you.