

**10<sup>th</sup> WORLD CONFERENCE OF THE INTERNATIONAL OMBUDSMAN INSTITUTE  
WELLINGTON, NEW ZEALAND, 12-16 NOVEMBER 2012  
*Speaking truth to power-the role of the ombudsman in the 21<sup>st</sup> century***

*Session D – The Ombudsman’s role as protector and promoter of human rights in a time of global financial crisis and austerity measures that limit and restrict government social & economic*

***What is or what can be the role of the Ombudsman regarding human rights?***

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**Abstract**

The Portuguese Ombudsman is an independent state body enshrined in the Constitution of the Portuguese Republic, elected by Parliament, and whose main role is to defend and promote the rights and freedoms, guarantees and legitimate interests of citizens. The institution is accredited by the ICC since 1999 as an A-status National Human Rights Institution, in full compliance with the Paris Principles.

Based on the mandate, work and experience of the Portuguese Ombudsman, and underlining that the ways in which Ombudsmen engages in human rights promotion and protection depends on their mandate, statutes, history and traditions of their countries, our aim is to **encourage Ombudsmen to affirm their capacity as National Human Rights Institutions (NHRI), acting in accordance with the Paris Principles. Ombudsmen with a mandate on the protection and promotion of human rights may be empowered of this complementary** role providing a broad mandate in the protection and promotion of human rights, both at national and international level, permitting both an individual approach and a more generic and systematic intervention.

**Introduction**

On behalf of the Portuguese Ombudsman, Judge Counselor Alfredo José de Sousa, I would like to thank the International Ombudsman Institute (IOI) for the invitation addressed to the *Provedor de Justiça* of Portugal to intervene in this conference with a specific paper on what can be the role of the Ombudsman regarding human rights.

One of the priorities of the Portuguese Ombudsman is to strengthen, clarify and raise awareness of the role the Ombudsman plays in the promotion and protection of human rights, namely in his capacity as National Human Rights Institution (NRHI).

At the national level, conscious of the importance of his function as National Human Rights Institution, but also of the lack of awareness that still exists in Portugal in relation to this role, the Ombudsman has sought, whenever possible, to disseminate information on this capacity amongst public entities and civil society. In this context, in February 2012, the Ombudsman issued a recommendation to Parliament to amend the Statute of the Ombudsman, to explicitly clarify the role of the Ombudsman as a NHRI, therefore contributing to a greater awareness of his activities.

At an international level one of the Portuguese Ombudsman's main aims is to promote the creation and strengthening of National Human Rights Institutions in Portuguese-speaking countries, thus contributing to promote and protect human rights in the Community of Portuguese-Speaking Countries (CPLP) and fostering cooperation between counterparts in the Portuguese-speaking space, as well as their participation in other international *fora*.

My presentation will reflect on the role of the Ombudsman regarding human rights, and try to respond to some concerns Ombudsman institutions face when evaluating their role in the promotion and protection of human rights or their role as a NHRI.

Based on the mandate, work and experience of the Portuguese Ombudsman, and in the believe that even in institutions with a mandate related mainly to administrative justice human rights can play a role, this presentation will try to demonstrate that **Ombudsman institutions, acting in accordance with the Paris Principles, can benefit from exercising a dual role.**

## **1. Ombudsmen and National Human Rights Institutions**

The concept of National Human Rights Institution dates back to 1946. National Human Rights Institutions were conceived as entities at national level that could contribute to the State's adherence to human rights standards and reinforce communication between the United Nations and the individual States. In 1993,

the United Nations General Assembly adopted a set of principles concerning the status of these institutions, defining aspects of their composition, mandate and methods of operation and guarantees of impartiality and pluralism<sup>1</sup>. They became known as the «Paris Principles», guidelines that are nowadays considered the minimum standard to be respected by all National Human Rights Institutions, in terms of their full independence and effectiveness of their action. Also in 1993, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) was created. Its main mission is to assess these Institutions' compliance with those principles, through a process of accreditation and re-accreditation that may result in three classifications: A (fully compliant), B (not fully in compliance) and C (not compliant).

The international community looks to National Human Rights Institutions with an A-status accreditation to play a key role in the implementation of national systems of protection and promotion of human rights. This importance is especially evident at the United Nations, which has granted them a set of participation rights in certain *fora*, especially in the Human Rights Council, allowing them to submit documents, attend meetings and make autonomous oral interventions. More recently, international conventions in the area of human rights, when establishing monitoring or reporting mechanisms, make a special reference to the status and functioning of national human rights institutions<sup>2, 3</sup>, thus recognizing their role and independent status .

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<sup>1</sup> A/RES/48/134, of 20th December, at <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>.

<sup>2</sup> Article 33, par. 2 of the Convention on the Rights of Persons with Disabilities (CRPD): “States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights”.

<sup>3</sup> Article 17 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT): “Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions”.

As a result of their history, traditions and legal systems, Member States have created different types of NHRI to fulfill this role, largely following two models; either the Commission/ Institute model or the Ombudsman model. In some regions, like Asia and Africa, the majority of NHRI follows the commission model; other regions, as South America, follow Ombudsman model. In Europe, you find both models, but there has been a tendency, since the 1970's to create institutions based on the Ombudsman tradition model, but with a broad mandate to protect and promote human rights. More recently, the tendency has been to merge institutions with different but sometimes overlapping mandates and explore the synergies, in order to promote greater efficiency and reduce costs.

The international community has already acknowledged the role of Ombudsmen in the protection and promotion of human rights. Recent United Nations Assembly Resolutions encourage Ombudsmen to operate in accordance with the principles related to the status of national human rights institutions for the promotion and protection of human rights and request their accreditation by the ICC in order to enable them to interact effectively with the relevant human rights bodies of the United Nations system<sup>4</sup>.

At the Council of Europe level, the Parliamentary Assembly confirmed the importance of the institution of Ombudsman within national systems of protection of human rights and the promotion of the rule of law<sup>5</sup>. The opinions of the Venice Commission, relating to the Ombudsman institution, always recommend empowering Ombudsmen with a broad mandate to promote and protect human rights<sup>6</sup>. More recently, a resolution of the Association of Ombudsman of the Mediterranean (AOM) underlines the importance of fulfilling the Paris Principles and called for the enlargement of powers of Ombudsmen, namely in what refers to the promotion and protection of human rights<sup>7</sup>.

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<sup>4</sup> General Assembly A/RES/63/169 and A/RES/65/207 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, at <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>.

<sup>5</sup> Recommendation 1615(2003), adopted on 8 September 2003, at <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta03/erec1615.htm>.

<sup>6</sup> CDL(2011)079 European Commission for democracy through law (Venice Commission), Compilation on the Ombudsman institution, at [http://www.venice.coe.int/site/main/Ombud\\_E.asp](http://www.venice.coe.int/site/main/Ombud_E.asp) and [http://www.venice.coe.int/site/dynamics/N\\_Subject\\_ef.asp?T=24&L=E](http://www.venice.coe.int/site/dynamics/N_Subject_ef.asp?T=24&L=E).

<sup>7</sup> Resolution of the 6th Meeting of the Association of Ombudsman of the Mediterranean, Paris, 11 and 12 June 2012.

## **2. The Portuguese Ombudsman: mandate, competences and powers and his role as National Human Rights Institution**

The Portuguese Ombudsman is an independent state body enshrined in the Constitution of the Portuguese Republic, elected by Parliament, whose main role is to defend and promote the rights and freedoms, guarantees and legitimate interests of citizens, and to ensure, by informal means, that public authorities act fairly and in accordance with the law<sup>8</sup>.

The institution is accredited by the ICC since 1999 as an A-status National Human Rights Institution, in full compliance with the Paris Principles. In 2007, following a reaccreditation process, the Status "A" was maintained, confirming full compliance with the Paris Principles. The Portuguese Ombudsman is currently undergoing a new reaccreditation process.

As an institution created in 1975, after a revolution, with the aim to affirm the primacy of a democratic state and the respect for human rights and the rule of law, the Portuguese Ombudsman, although following the classical Ombudsman model, was also given a broad mandate to defend and protect human rights, a fact reflected in the way the Constitution and the law have shaped his mandate, powers and competences. This conception was reinforced by the option to insert the right to complain in the Constitutional chapter concerning "Fundamental rights and duties", rather than including it in the chapter concerning public administration.

It should also be underlined that the concept of "rights, freedoms and guarantees and legitimate interests" is broad, and includes not only the rights enshrined in the Constitution and other domestic law, but also those established by international human rights law, whether of customary or conventional origin, which forms part of the Portuguese legal order in the conditions set by article 8 of the Constitution. In addition, not only civil and political rights but also economic, social and cultural rights fall within the scope of competence of the

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<sup>8</sup> Article 23 of the Portuguese Constitution <http://www.en.parlamento.pt/Legislation/index.html> and Law n.º 9, of April 9, as amended by Law n.º 30/96 and Law n.º 52-A/2005, of August 14 and October 10, respectively, henceforth referred as the Statute, at <http://www.provedor-jus.pt/Ingles/OmbudsmanStatute.htm>.

Portuguese Ombudsman, reflecting the concept of indivisibility of the Universal Declaration of Humans Rights.

Designed as a classical institution, the Ombudsman may act on matters falling within his/her competence on basis of complaints submitted by citizens against public powers. In light of the principles of equality and equal treatment, enshrined in articles 13 and 15 of the Constitution, the concept of “citizens” is understood to mean all persons, without discrimination of any sort, *inter alia* based on age, religion, gender, nationality, place of residence and racial or ethnic background. Specifically, the Ombudsman is an institution available also to foreigners and stateless persons, regardless of whether or not they have regularised their legal situation in the country.

While complaints handling remains at the core of the Ombudsman’s activity, he/she may also act on his/her own initiative, based on facts or issues that otherwise come to his/her knowledge, such as through civil society or media reports. Own- initiative interventions may also result from the consideration of systemic/horizontal issues identified when dealing with individual complaints.

As regards the subjective scope of activity of the Ombudsman, it is primarily defined around the notion of “public powers”; a broad concept, that includes, notably, services integrated in the central, regional and local Public Administration, the Armed Forces, public institutes, public companies or companies whose capital is mostly public and companies that are concessionaires operating public services or exploiting state property. However, under certain circumstances the role of the Ombudsman may extend to the relations between private actors, such as where a dominant position of authority exists and the Ombudsman’s intervention is in order due to protect rights, freedoms and guarantees.

The Ombudsman may act in relation to actions and to omissions of entities covered by his/her mandate. Also, his/her intervention may be directed either at preventing, halting or remedying situations of illegality or injustice.

To carry out his/her functions, article 20 of the Statute gives to the Portuguese Ombudsman the following competences:

- Address recommendations to the competent bodies with a view to correcting illegal or unfair acts of public authorities or to improving their services – i.e. administrative recommendations (paragraph 1, indent a));
- To point out shortcomings in legislation, make recommendations concerning its interpretation, amendment or revocation, or suggesting the drafting of new legislation – i.e. legislative recommendations.;
- Issue opinions, upon request of the Parliament, on any matter related to its activity (paragraph 1, indent c));
- Promote the divulgation of the content and meaning of each fundamental right, as well as of the purpose of the Ombudsman institution, the means of action at its disposal and how to appeal to it (paragraph 1, indent d));
- Intervene, in accordance with the applicable law, in the protection of collective or diffuse interests whenever a public entity is involved (paragraph 1, indent e));
- Request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions, in accordance with article 281, paragraph 1 and paragraph 2, indent d) of the Constitution, and request the Constitutional Court to rule on cases of unconstitutionality due to a legislative omission, in accordance with article 283, paragraph 1 of the Constitution (paragraphs 3 and 4).

To examine matters falling within his/her scope of competence, the Ombudsman has significant powers of investigation, limited only by the necessary respect for fundamental rights and for legal restrictions concerning

confidentiality of judicial investigations or the higher interest of the State, when duly justified by the competent bodies, in issues relating to security, defence or international relations (articles 21, 28, 29 and 30 of the Statute).

In this context, article 21 of the Statute affirms that in the performance of his/her duties, the Ombudsman shall have the following powers:

- To make, with or without prior notice, inspection visits to any area of activity of the central, regional and local Administration, including public services and civil and military prisons, or to any other entities under his/her control, hearing their bodies and officials and requesting such information, and the exhibiting of documents, as he/she may deem adequate (paragraph 1, indent a));
- To undertake such investigations and enquiries as he/she may deem necessary or convenient, in which he/she may use, for the purposes of collecting and producing evidence, all reasonable means, provided that such means do not collide with the rights and legitimate interests of citizens (paragraph 1, indent b));
- To search, in cooperation with the competent bodies and services, the solutions that best allow the protection of the legitimate interests of citizens and the improvement of the Administration's activity (paragraph 1, indent c)).

As stated earlier, some of these competences and powers reflect the intent to confer to the Portuguese Ombudsman adequate instruments to pursue a role as a protector and promoter of human rights:

- Explicit mandate regarding awareness-raising and human rights education, by promoting the dissemination of information on the meaning and content of each fundamental right and the role of the Ombudsman in their defence;

- Competences regarding interpretation, amendment, revocation or suggestions for new legislation, drawing the attention of shortcomings in the legislation in force and permitting a more general and comprehensive action on the conformity of constitutional rights and /or international human rights standards;
- Power to initiate proceedings before the Constitutional Court, not only in respect to the abstract successive control of the constitutionality, but also in cases of unconstitutionality by omission, given the Ombudsman a role in the monitoring of the implementation of the Constitution, namely in respect to the protection and promotion of human rights;
- Powers to investigate and monitor the safeguard of human rights, notably the power to carry out inspection visits with or without prior notice, based on which the Ombudsman has access to facilities where the freedom of individuals is restricted, such as prison or detention centres, or facilities concerning more vulnerable groups of people, such as homes for elderly people.

On a final note, it should be highlighted that, pursuant to article 142, indent d) of the Constitution and article 20, paragraph 2 of the Statute, the Portuguese Ombudsman is a member of the Council of State, a political body that advises the President of the Republic. This enables the Ombudsman to, at the highest level of the State, give voice to the public interests that he/she is mandated to protect.

### **3. Experience of the Portuguese Ombudsman: how the human rights dimension is expressed in the Ombudsman's work**

As previously underlined, the human rights dimension of the Ombudsman's work is expressed in its mandate and derives from the two roles the Portuguese Ombudsman plays simultaneously: that of Ombudsman, pursuant to the classical model; and that of National Human Rights Institution, fully compliant with the Paris Principles.

In practical terms, the human rights dimension is expressed in the Portuguese Ombudsman's daily work, both at national and international level, beginning with the handling of complaints, his own initiative investigations and inspections, the issuing of recommendations, or the reporting to Parliament or to international bodies

Thematically, this dimension is particularly evident in certain areas of activity, such as the penitentiary system and the rights of persons deprived of liberty, the rights of foreigners and migrants and also the rights of children, elderly persons and persons with disabilities.

Several examples can be given of recent cases in which the intervention of the Portuguese Ombudsman, following a citizen's complaint, led to a greater alignment of the legislation/ regulations with the requirements of fundamental rights are:

- The Ombudsman's recommendations were taken on board in the new Code on Enforcement of Sentences and Measures involving Deprivation of Liberty (2009) and the new General Regulation on Prisons (2011). Their impact clearly went beyond a merely administrative level and contributed to a horizontal reinforcement of the rights and guarantees of inmates;
- The Ombudsman's suggestion to remedy the issue of the lack of a Disabilities Table adequate to assess the degree of disability of non-professional origin, which will allow to put an end to the omission, ensuring the effective access by citizens with disabilities to the corresponding social and tax benefits, in line with the right to an adequate standard of living and to social protection;
- The Ombudsman's recommendations, concerning 3 cases of age discrimination, where specific reference was made to international

human rights instruments and the need to harmonise national legislation and practice with their requirements;

- The intervention of the Ombudsman in a case referring to the use of a *taser* weapon, led to a due investigation by the competent authorities, but also contributed to prevent similar future incidents. Following the incident, the Minister of Justice adopted new internal rules on the use of *taser* arms, referring specifically to the Ombudsman suggestions, namely the need to register by video any intervention;
- The intervention of the Ombudsman following complaints regarding delays in the elaboration of social reports by the Social Security services to be used in family courts and necessary for the exercise of regulation of parental responsibilities. The Ombudsman concluded that the delays were widespread and caused prejudices not only to the interested persons but also to the functioning of courts; he reported the situation to the Ministry of Justice and Ministry of Social Security that decided to create a working group in order to study possible solutions to this problem. The Ombudsman will be following carefully the situation and solutions proposed.
- Additionally, in a case concerning a delay to scheduled visits accompanied by a Social Security team, between a child and father pursuant to a divorce, the intervention of the Ombudsman ensured that administrative obstacles that stood in the way of a full implementation of the child's right to maintain contact with both parents were overcome.

The interventions of the Ombudsman in the context of his powers of inspection should also be stressed. In 2011 and 2012, on his own initiative, he initiated a set of inspection visits to the detention areas of the Public Security Police, the National Republican Guard and the Judiciary Police. These have allowed him, among other aspects, to contribute to a deeper level of respect for the fundamental rights of citizens who are subject to detention or who resort to these authorities, preventing situations of excessive use of force or of disregard

for legally established proceedings. Inspections to the National Institute of Legal Medicine and Forensic Sciences, to employment centers and to homes for elderly persons, were also carried out. These inspections gave rise to reflections on the right to a fair trial, the right to work and to an adequate standard of living and the protection rights of especially vulnerable groups of citizens.

The Portuguese Ombudsman is mandated not only to defend but and also to promote human rights. In respect of the promotion function, the Ombudsman has the competence to promote the dissemination of information on the content and meaning of fundamental rights, as well as of the role of the Ombudsman itself.

With this aim, the Portuguese Ombudsman generally issues statements or publishes information, through the media or the website, concerning the conclusions reached in the cases investigated, in a way that these decisions may clarify the content of fundamental rights, thus contributing to a greater knowledge of them both by the public authorities and by the citizens involved.

On the other hand, relevant human rights education and awareness-raising activities also include the provision of specialised information and advice through the Ombudsman's toll-free hotlines for children, elderly persons and persons with disability. In carrying out their tasks, these hotlines seek not only to find solutions for the specific cases under investigation in cooperation with the competent public authorities, but also to inform the complainants about their rights and the means available to uphold them.

Furthermore, an overall renovation of the Portuguese Ombudsman's website is currently underway to make it more user-friendly, and to include essential information about the Ombudsman's activity, as well as make it accessible to all citizens to conduct free text searches and facilitate the filing of an existing electronic complaint.

An important part of the Ombudsman's activity as regards human rights education and awareness-raising stems from a Cooperation Protocol signed between this institution and the Minister of Education in May 2011. The aim of this Protocol is to promote and disseminate information to state school students regarding Human Rights, the Convention on the Rights of the Child, the existence and role of the Ombudsman and the ways to appeal to him/her. Building on previous initiatives the Protocol envisages the organisation of regular information activities in schools by staff of the Ombudsman, study visits to the Office of the Ombudsman and consultations to allow the Ombudsman to hear children and young people on issues that concern them.

Several other protocols have been signed to raise awareness of the Ombudsman's activities.

In 2010, a Protocol of cooperation was signed with the National Association of Portuguese Municipalities. Under this Protocol, the adhering municipalities, after have been trained on the mission and tasks of the Ombudsman, provide free use of computer to citizens and help them to access the Ombudsman's website, where they can find the electronic complaint form.

In May 2012, the Ombudsman signed a Cooperation Protocol with the Office of High Commissioner for Immigration and Intercultural Dialogue whereby a commitment was given to inform citizens of the Ombudsman's mission and competences, as well as of the means to submit a complaint to him. The Office of High Commissioner for Immigration and Intercultural Dialogue also commits to making available in National Centres for Immigrant Support adequate means and free access to the Ombudsman's webpage, as well as assistance for filling out complaint forms, whenever requested.

Also to be mentioned is the Cooperation Protocol signed in April 2011 between the Ombudsman and the Law School of the University of Lisbon. Its aim is to establish the basis for cultural, educational, scientific and technical cooperation between these two institutions, namely through the organization of joint seminars.

#### **4. Ongoing and future initiatives of the Portuguese Ombudsman to promote or protect human rights**

Although having a broad mandate to promote and protect human rights, and the necessary powers and competences to exercise this mission as national human rights institution, at the present, there is no explicit mention of this role in the constitutional and legal provisions that establish this institution and define its mission, competences and powers.

However, in practice, the lack of an explicit legal basis has not hindered the development of these aspects of the Ombudsman's work, pursuant to his/her overall mandate to protect and promote fundamental rights. Nevertheless, the omission has merited the attention of the Ombudsman, given the importance of such functions and the need to raise greater awareness to them at national level.

Therefore, in February 2012, the Portuguese Ombudsman recommended to Parliament that the Statute be revised in order to introduce specific changes, *inter alia* an explicit legal basis for the institution's role as National Human Rights Institution and for the tasks it performs in the framework of the international human rights system and also pursuant to the international conventions, treaties and other instruments by which the Portuguese State is bound.

The relevance of the role played by National Human Rights Institutions which are fully compliant with the Paris Principles has also been affirmed by the Ombudsman at the international level. In this context, the Portuguese Ombudsman, Judge Alfredo José de Sousa, has given priority to, and carried out several initiatives at the bilateral and multilateral levels, the promoting of the creation or appointment of Ombudsmen/National Human Rights Institutions in Portuguese-speaking countries where such institutions do not yet exist or are still not implemented. This initiative aims to promote cooperation between counterparts in the Portuguese-speaking space and to foster their participation

in other international *fora*, contributing to the realization of the goals of Resolution A/65/RES/207<sup>9</sup>, which encourages the creation of Ombudsman, Mediators and other National Human Rights Institutions compliant with the Paris Principles in the States where they do not exist.

The Ombudsman spoke about these initiatives in a round table organised on the margins of the 18th session of the Human Rights Council, on 26 September 2011, on the implementation of UN Resolution 65/207, and organised jointly with the Office of the United Nations High Commissioner for Human Rights (OHCHR), a seminar on the promotion of Ombudsmen/National Human Rights Institutions in Portuguese-speaking countries that took place in Cape Verde from 15 to 17 October 2012.

## **5. Institutions with a dual role/mandate: challenges, opportunities and synergies**

The broad mandate of the Portuguese Ombudsman, namely in respect of the promotion and protection of humans rights, led to its “A” status accreditation within the ICC in full compliance with the Paris Principles.

In its role as NHRI the Ombudsman is sometimes approached by colleagues, asking practical questions in order to evaluate their role in the promotion and protection of human rights and an eventual accreditation as a NHRI.

What are the appropriate activities for an Ombudsman to undertake for the promotion or protection of humans rights? Has there anything changed in your everyday work after becoming an NHRI? Has the status of NHRI brought you any additional tasks? Do you have any special activities promoting human rights regarding your NHRI status? How can Ombudsmen become advocates of human rights without compromising the classical role of the Ombudsman? Where are the boundaries and limitations – should there be any? What were the challenges/opportunities your institution faces to reinforce their role in the promotion and protection of humans rights?

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<sup>9</sup> A/RES/65/207 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, at <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>

To answer all these questions, that are also very useful for us when evaluating our work, we try to answer with examples of our activity concerning human rights as I have done today here. We always conclude that the Ombudsman's human rights dimension is expressed in his daily work, both nationally and internationally, whether he is investigating complaints, making general inspections, promoting awareness of his institution or reporting to international bodies.

The answers we give try to reflect our experience. Several examples of appropriate activities to protect and promote human rights can be mentioned, promoting education, training, and research or advocating, but each institution has, according with its tradition and history, to develop the model that better suits its activity and concerns according to its mandate and powers.

The "A" status accreditation does create an increase of tasks, namely regarding the Ombudsman's international activity; the recognition of the Ombudsman as a NHRI lead to additional participation rights, especially within the United Nations treaty bodies. Aware of our capacity as a NHRI, different international bodies seek to establish a closer relationship with the Portuguese Ombudsman and contact us regularly with requests for information questionnaires, consultations, and invitations to attend meetings.

However, these additional tasks were also new opportunities that bring added value to our daily work; we are more recognized at national level, both by civil society and government and our capacity for intervention increases as the international partners address us to express our opinion that will be reflected in the recommendations made to Portugal by international bodies.

At national level, this role as the Portuguese National Human Rights Institution allows the Ombudsman to participate in the work of the National Commission for Human Rights created in 2011. One of the specific competences of this Commission, an intergovernmental body, composed of representatives of several governmental departments, is to propose that the Portuguese State consents to be bound by international human rights instruments and to prepare

the reports Portugal has to submit to international bodies. As such, through the participation in its meetings, the Ombudsman is able to receive regular updates on different human rights initiatives undertaken by the Portuguese authorities, including on-going and planned ratification/accession procedures, as well as to provide direct feedback to the competent authorities in that context and contribute to the national reports.

What are our boundaries, limitations and challenges? Our boundaries and limitations are our mandate, competences and powers. However, with such a broad mandate, we can say our current challenges are the ones every institution faces: human and financial resources. At a time of crisis, when the number of complaints is increasing, and human rights are more at risk, the Portuguese Ombudsman's objective is to continue to maintain the level of protection and to continue to raise awareness about his activities and his capacity as a human rights institution.

In order to achieve this objective, we try to derive the maximum benefit from the work undertaken, use its findings, both at national and at international level, and define objectives and priorities. As National Human Rights Institution we try to reinforce our level of participation in the different United Nations bodies. We use all the information we have gathered from the individual complaints mechanism, the inspections, the cases opened on the Ombudsman's own initiative, resulting from contributions of civil society, media reports and, in some cases, information received from international bodies, and report our general findings and concerns to those international bodies. When time and financial resources do not allow us to be present at international committees, we try at least to send a written contribution.

It is true that the protection and promotion of human rights may require additional activities and sometimes we receive criticism and suggestions to enlarge our activities into other areas, such as academics researches or advocacy. In this respect, we consider that the protection and promotion of human rights is a never ending task, and for which priorities must be defined.

We try to focus our activities and attention in the areas we feel we can contribute and achieve the most.

We do not think that the defence of human rights can compromise our role as a classical Ombudsman. In fact, we consider that these two roles can represent a synergy in the Ombudsman's activity; the role as NHRI allows the Ombudsman to contribute to the greatest possible alignment of Portuguese legislation and practice with international law on human rights, as well as with the recommendations issued by the international bodies monitoring the respect for these rights; his participatory rights at international level reinforce his capacity at national level to be heard. On the other hand, the knowledge and experience gained by the Ombudsman in carrying out his investigation functions, either following a complaint or through his own initiative, allow him to provide to the international entities an impartial and detailed perspective on the human rights situation in Portugal, thereby enabling them to carry out their duties in a more informed way. In many cases individual complaints lead us to identify systematic/ horizontal issues that need to be addressed by the Ombudsman. These two roles cannot be dissociated, but rather complement each other, providing a broad mandate in the protection and promotion of human rights.

## **Conclusions**

The Portuguese Ombudsman is an independent state body, enshrined in the Constitution of the Republic, elected by Parliament, whose main role is to defend and promote the rights and freedoms, guarantees and legitimate interests of citizens, ensuring, by informal means, that public authorities act fairly and in accordance with the law.

In the Portuguese case, the promotion and protection of human rights derives mainly from the two roles this institution plays simultaneously: that of Ombudsman, pursuant to the classical model, and that of National Human Rights Institution, in full compliance with the Paris Principles. These two roles cannot be dissociated, but rather complement each other, providing a broad mandate for the promotion and protection of human rights.

Protection of human rights is an essential part of the work of all Ombudsmen. The ways in which Ombudsman institutions engage in the promotion and protection of human rights depends on their mandate and powers and also of the resources available.

Accreditation as a NHRI is not essential for an Ombudsman to fulfil his/her mandate in the area of human rights, but the recognition from the international community of his/her capacity and full compliance within minimum standards as an independent body, and the extra participatory rights, strengthen the mandate of the institution, reinforce the capacity of intervention and the recognition of the institution.

Ombudsmen can have a dual role, as Ombudsman and as NHRI, and these two tasks should be complementary, taking advantage and making the link between the national and international level, thereby reinforcing the national level according to international human rights standards.

The overall competences and powers of the Ombudsman, combined with the authority and the reputations of integrity and independence of the institution, ensure the necessary conditions to a better and stronger protection promotion of human rights.

In a time of crisis and scarce resources it is crucial to reinforce the Ombudsman's role in the protection and promotion of human rights.

## List of Abbreviations

AOM - Association of Mediterranean Ombudsman

CPLP - Community of Portuguese-Speaking Countries

ICC - International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

IOI - International Ombudsman Institute

NHRI - National Human Rights Institution

OHCHR - Office of the High Commissioner for Human Rights

## References

- Convention on the Rights of Persons with Disabilities (CRPD);
- Council of Europe Parliamentary Assembly Recommendation 1615(2003), 8 September 2003;
- European Commission for Democracy through Law (Venice Commission), Compilation on the Ombudsman institution CDL(2011)079;
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- Resolution of the 6th Meeting of the Association of Ombudsman of the Mediterranean, Paris, 11 and 12 June 2012;
- United Nations General Assembly Resolution A/RES/48/134, of 20th December (Paris Principles);
- United Nations General Assembly Resolution A/RES/63/169 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights;
- United Nations General Assembly Resolution A/RES/65/207 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights.

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