



**PROVEDOR DE JUSTIÇA**  
Gabinete da Provedora

**Consultation on the role of the Ombudsman, mediator and other national human rights  
institutions in the promotion and protection of human rights**

(March 2020)

The Portuguese Ombudsman institution, in its capacity of national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the call for input received from the Office of the United Nations High Commissioner for Human Rights (OHCHR), for a contribution to the Secretary-General’s report to the seventy-fifth session of the General Assembly.

The current mandate holder is Maria Lúcia Amaral.

**The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights**

**PORTUGAL**

**Portuguese Ombudsman – Provedor de Justiça**

**Background**

Pursuant to paragraph 7 of General Assembly resolution 72/186 (attached), requesting the Secretary-General to report on best practices in the work and functioning of the Ombudsman, mediators and other human rights institutions, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has the honour to share the hereunder questionnaire, in order to seek the views of Ombudsman, mediator and other national human rights institutions in this regard.

As requested in paragraph 7, the results of this survey will be reflected in the Secretary-General's report to the seventy-fifth session of the General Assembly.

**Questionnaire**

- 1) **Do you operate, as appropriate, in accordance with the Paris Principles and assist your authorities in the promotion and protection of human rights?**

Yes. The Portuguese Ombudsman was awarded with "A" status, for being fully in compliance with the Paris Principles. It assist other activities in the promotion and protection of human rights, namely governmental and local bodies, as detailed below.

- 2) **Do you consider that your institution is provided with an adequate constitutional and legislative framework, as well as financial and all other appropriate means in order to ensure the efficient and independent exercise of your institution's mandate and to strengthen the legitimacy and credibility of your institution's actions in the promotion and protection of human rights?**

According to the Constitution (Article 23 (3)) and the Statute (Article 1 (1)), the Ombudsman is an independent State body elected by the Parliament. This means that the Ombudsman cannot receive instructions from any other body, institution or entity, including the Government. The practice confirms the complete respect, namely by public authorities, regarding the independence and integrity of the Ombudsman institution in the performance of its duties.



The Ombudsman's budget is part of the Parliament's budget and the Ombudsman reports its activities annually to the Parliament. However, even as for the relationship between the Ombudsman and the Parliament, it should be underlined that the Portuguese Ombudsman does not incorporate the legislative power – it is neither a parliamentary body, nor an ancillary body to the Parliament.

As far as the avoidance of conflict of interests is concerned, the Statute determines that the appointment as Ombudsman may only fall upon a citizen who, besides meeting the conditions required for being elected a Member of the Parliament (MP), enjoys a well-established reputation of integrity and independence. Moreover, Article 11 of the Statute stipulates that the incumbent shall be subject to the same incompatibilities that apply to court of law judges in office (paragraph 1) and prohibits him/her from holding any position within the bodies of political parties or associations, as well as from engaging in any public political party activities (paragraph 2).

The Portuguese Ombudsman is also endowed with a set of other important personal, institutional, functional and organisational guarantees, provided for by the law and that cement and strengthen the independence and autonomy of the institution.

However, the Ombudsman has repeatedly claimed that it lacks sufficient material and human means to pursue the activities established in its mandate.

The Ombudsman's current structure was approved in 1991, through the Law no. 9/91, of 9 April. In 1999, the Ombudsman was designated as National Human Rights Institution (NHRI) and, in 2013, it was appointed as the National Preventive Mechanism (NPM), pursuant to the Optional Protocol to the Convention against Torture. Thus, it also became responsible to monitor all places of deprivation of liberty in the Portuguese territory.

Neither the Ombudsman's designation as NHRI nor its appointment as NPM were followed by measures (namely, the reinforcement of financial and human resources) aimed at strengthening its monitoring functions. As a result, new functions as the promotion of Human Rights, dialogue with international institutions (UN bodies, Council of Europe and others), monitoring duties, visits, coordination, and reports are done by the same staff that deals the traditional tasks of the Ombudsman.

The Ombudsman has repeatedly claimed that its material and human resources are clearly insufficient. This insufficiency has also been highlighted by several international bodies such as, lately, the Committee on the Rights of the Child, the Subcommittee on Prevention of Torture and the Committee against Torture.

**3) Have you requested, in cooperation with OHCHR, accreditation by the Global Alliance of National Human Rights Institutions (GANHRI) in order to interact effectively with the international human rights system?**

Yes. As mentioned above, in 1999, the Ombudsman was designated as National Human Rights Institution (NHRI) and, since then, it has been accredited with "A" status by GANHRI for being fully in line with the Paris Principles.

**4) Do you cooperate with relevant State bodies and develop cooperation with civil society organizations?**



#### **4.1. Cooperation with relevant State bodies**

Interaction with other bodies is a fundamental part of the Portuguese Ombudsman's work. An important part of this work implies searching, in cooperation with the competent bodies and services, for the solutions that best allow to protect the legitimate interests of citizens and to improvement the Administration's activity (Article 21 (1) (c) of the Statute). What is more, while dealing with citizen's complaints, and before any conclusions can be drawn, the Ombudsman must always hear the bodies and the officials at stake and allow them to provide every clarification required (Article 34 of the Statute). Finally, whenever the Ombudsman deems that a judicial or administrative remedy, specifically established by law, is available to the complainant, the Ombudsman may simply opt to refer the complainant to this other authority (Article 32 of the Statute).

Cooperation between the Portuguese Ombudsman and other bodies also takes place beyond the specific domain of complaints handling. Most significantly, the Ombudsman, in the capacity of NHRI, is invited to observe the plenary and working group meetings of the Portuguese Government's National Human Rights Committee - an inter-ministerial coordination body, under the supervision of the Minister of Foreign Affairs, which is responsible to guarantee that the Government fulfils its obligations under the international human rights system.

The Ombudsman is also represented in the National Commission for the Promotion of Rights and Protection of Children and Youth, a public body whose role is to plan the State's action as well to coordinate, follow-up and evaluate the action of public bodies and the community as regards the protection of children and youngsters at risk. The Ombudsman is further represented in the National Mechanism for Monitoring the Implementation of the Convention on the Rights of Persons with Disabilities.

The Ombudsman also maintains close cooperation with the High Commission for Migration and with the Commission for Equality and Against Racial Discrimination, the Commission for Labour and Employment Equality and the Commission for Citizenship and Gender Equality. These are administrative institutions with specialised competence in areas connected to the protection of human rights, which exercise their duties with independence, as ensured by the legal provisions that regulate their mandates, despite reporting to the competent members of Government. Moreover, the Ombudsman also interacts with the National Data Protection Commission, which is an independent administrative entity operating under the Parliament. The Portuguese Ombudsman follows the work of these institutions, to the extent that their opinions, studies and activities are of interest to the assessment of the complaints and own-initiative cases. If deemed adequate, the Ombudsman may also refer complainants to these institutions, pursuant to Article 32 of the Statute, above mentioned.

It should be taken into account that as an institution with parliamentary legitimacy and reporting annually to the Parliament, the Portuguese Ombudsman naturally holds a particularly close connection with that institution. In addition to the Annual Reports, the Ombudsman can participate in the work of parliamentary committees, at their request and ex officio, as well as to issue opinions at the request of the Parliament. Legislative recommendations issued by the Ombudsman are forwarded to the Parliament and cases of non-compliance with the Ombudsman's decision or of lack of collaboration from the Administration may also be brought to the attention of the Parliament.

#### **4.2. Cooperation with civil society organizations**



Even though neither the Constitution nor the Statute explicitly regulates a specific form of relationship between the Portuguese Ombudsman and civil society, this institution interacts with civil society actors in many ways.

The Ombudsman's broad mandate allows the Ombudsman to act as a "channel" for voicing the concerns of civil society before public authorities. Civil society actors such as trade unions, professional associations and NGOs often make use of the constitutional right to complain to the Ombudsman, in order to address their concerns regarding actions or omissions in the exercise of public powers, which they perceive as giving rise to illegality or unfairness and ultimately to breaches of fundamental and human rights.

Civil society representatives are often received personally by the Ombudsman, by their own request. The Ombudsman also takes the initiative to establish contacts with organisations working in fields falling within his/her scope of action, especially those representing population groups that are more vulnerable or likely to suffer discrimination.

Furthermore, the Ombudsman may decide to investigate matters on his/her own initiative, based on NGO reports or on information provided by other actors.

The Ombudsman also acts a promoter of civil society's knowledge of fundamental and human rights and remedies available, by exercising his/her human rights education and awareness-raising mandate (Article 20, paragraph 1, d), of the Statute). Relevant initiatives under this provision include (i) decisions and positions taken by the Ombudsman in the context complaints handling, which always strive to clarify the content of fundamental/human rights, (ii) providing specialised information and advice through the toll-free hotlines for children, elderly persons and persons living with disability, (iii) organising and participating in seminars, conferences and lectures on human/fundamental rights, (iv) publishing studies and reports, (v) posting of information on the Ombudsman's website and (vi) active press relations.

Regarding formalised cooperation, the Protocol signed with the Institute for Child Support (IAC) a well-established Portuguese children rights NGO established in 1981, provides for cooperation between the Ombudsman's toll-free Children's Hotline, to receive complaints concerning cases of children and young people who are in danger or at risk and to provide information on the rights of the child, and the IAC's S.O.S Child Hotline, to prevent situations of risk to children. Collaboration includes mutual forwarding of calls and the organization of activities.

The National Preventive Mechanism has also established a periodic dialogue with the IOM for sharing information and joint action in what regards human rights of migrants, especially in detention. Both institutions share each other's materials and develop training sessions on human rights of migrants for judges, public prosecutors or migration officers.

Finally, some of organisations of the civil society are part of the consulting board of the National Preventive Mechanism, such as two NGOs, the Law Bar Association and the Medical Board. In this way, a specific organism within the Ombudsman is composed by members of the civil society.

- 5) **Do you conduct outreach activities at the national level, in collaboration with all relevant stakeholders, in order to raise awareness of the important role of your institution?**



The broad mandate of the Portuguese Ombudsman includes promotional and awareness-raising functions that require interaction with a range of actors.

Pursuant to Article 1 (1) of the Statute, the Portuguese Ombudsman is mandated not only to defend but also to promote the rights, freedoms and guarantees and legitimate interests of citizens, ensuring that public powers act fairly and in compliance with the law.

The promotion function is further reflected in Article 20 (1), (d) of the Statute, which gives to the Ombudsman 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, the means of action at his/her disposal and how to appeal to him/her.

The Ombudsman cooperates regularly with several stakeholders in order to raise awareness on its functions:

. it is regularly invited to present communications at human rights conferences, seminars and classes, increasing public awareness on human rights and the importance of its role in this context. These conferences are often organised with partnerships with other entities, such as universities, bar associations, medical boards, municipalities, civil society associations, among others.

. The Ombudsman keeps a close dialogue with schools, visiting establishments and developing activities with students, especially on occasion dates, such as the Children's Day.

- The Ombudsman has also celebrated protocols with other State bodies, endowed with the role of promoting Human Rights. For example, in 2011 a Protocol with the purpose of improving assistance to migrants and raising awareness on the Ombudsman's role was signed with the High Commissioner for Migration. The High Commission for Migration commits to helping the Ombudsman, with full confidentiality, with translations. On its turn, the Portuguese Ombudsman commits to provide all necessary documents to enable the High Commission to inform citizens of his mission and competences, as well as to forward to the Legal Support Offices at the National Centres those citizens that address him/her and that need guidance to which the High Commission is especially competent.

- Finally, in the context of the DEMOS Project «*Red de Defensores del Pueblo – Construir juntos una administración más eficaz, responsable, transparente y ética*», the Ombudsman has been very actively raising awareness on its role with the cooperation of the municipalities of the Islands in Azores and Madeira in the past three years.

**6) In your view, what were the obstacles encountered by your State in the implementation of resolution 72/186 'The Role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights' adopted by the General Assembly in December 2017?**

In general, the Portuguese State is very cooperative with the Ombudsman's work, and welcomes the active participation of the Ombudsman, in all the domains referred to in point 4.1.



However, as explained above in point 2), the Ombudsman is not sufficiently endowed with financial and all other appropriate means in order to ensure the efficient and independent exercise of their mandate as Ombudsman, NHRI and NPM.

- 7) **Please share experiences, lessons learned and best practices on the work and functioning of your institution, and on your institution’s collaboration with GANHRI, the International Ombudsman Institute and other regional networks and associations.**

Some good practices of the Portuguese Ombudsman may be summarized as follows:

- “Ex officio” power to investigate human rights violations by its own initiative;
- “In loco” visits, namely to prisons, police stations, schools, dwellings, informal settlements, hospitals, homes for children and older persons, etc., to observe material conditions and meet persons, both following complaints on specific issues or by its own initiative. Visits can be made without previous notice and no authorisation;
- Development of hotlines aimed at promoting and protecting human rights of children, persons with disabilities and older persons;
- Maintaining a permanent dialogue with the international bodies, namely through alternative reports, hearings in pre-sessions and additional information on the process of reviewing the State’s international obligations under the international human rights conventions;
- Maintaining a close relation with the municipalities;

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As for relations with GANHRI and other networks, we may point out some good practices:

- Developing a network of Ombudsmen and Human Rights Institutions of Portuguese-Speaking Countries, aimed at sharing experiences and providing help, training and guidance for Lusophone human rights institutions in their process of accreditation;
- Engaging actively with working groups, such as the ENNHRI working group on Business and Human Rights and the ENNHRI working group on migration. The Portuguese Ombudsman plays an important role in both of these groups, discussing trends, roles and tasks of the Institutions, developing tools, sharing best practices and experiences and contributing to newsletters and queries in the groups;
- Attending training missions organised by ENNHRI and other networks;
- Engaging with the European Network of Ombudsmen, namely by posting queries and answering to questions on its “Members’ Area”, as well as actively participating, often as speaker, in annual conferences;
- Participating in International Missions (such as “gaps assessment” missions) organised by some networks (such as NANHRI) in order to provide help to the development of similar institutions (such as, for example, the Human Rights Commission of Cabo-Verde and the Ombudsman and Human Rights Commission of Mozambique);



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Finally, we must highlight that the Portuguese Ombudsperson is, currently, member of the IOI European and Global Boards.

8) Please provide any additional comment you may have.

**Deadline for submission of responses to the questionnaire:**

**20 March 2020**

Filled questionnaires should be submitted via email to the following address:

[nicontractor1@ohchr.org](mailto:nicontractor1@ohchr.org), [nrcsintern1@ohchr.org](mailto:nrcsintern1@ohchr.org) and [nrcsintern2@ohchr.org](mailto:nrcsintern2@ohchr.org).

We thank you for your contribution.