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## Removing Barriers – The Accessibility of an Ombudsman or National Human Rights Institution to Vulnerable Communities

*Democratic governance is undermined where access to justice for all citizens (irrespective of gender, race, religion, age, class or creed) is absent. Access to justice is also closely linked to poverty reduction since being poor and marginalized means being deprived of choices, opportunities, access to basic resources and a voice in decision-making.<sup>1</sup>*

### I. INTRODUCTION

An ombudsman institution<sup>2</sup> is an alternative justice mechanism, often excluded from ‘access to justice’ debates, which tend to focus on formal judicial processes and legal aid. However, an ombudsman or a complaints-receiving human rights institution can provide flexible and less formal remedies to the public – services particularly suited to issues faced by vulnerable and disadvantaged groups, including ethnic, national and linguistic minorities. As such, ombudsman and national human rights institutions (NHRIs), by their very nature, already break down many of the prohibitive barriers inherent in the formal justice system, such as excessive costs, complexity and delays. Despite this, significant barriers hindering effective access to justice and service equity also exist in relation to ombudsman institutions and NHRIs on the side of both the institution and the public.

The extent of those barriers and, on the more positive side, the level of general effectiveness or ‘success’ of an ombudsman or NHRI, is difficult to measure. A number of criteria, such as the levels of independence, accountability, impartiality and competence of the institution, as well as the powers of investigation, are used as standards marking the ‘quality’ of the institution. Certain other indicators are more easily verifiable, such as the speed of taking action on a complaint or the rates of public authority compliance with the institution’s recommendations.

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1 United Nations Development Programme, Access to Justice Practice Note, 9 March 2004, 3, at <<http://www.undp.org/governance/docs/A2J%20PN%20Final.doc>>.

2 The words ‘ombudsman’ and ‘ombudsperson’ are used interchangeably in this article and no implication of gender is intended in the use of these terms.

One important criterion for effectiveness is the level of visibility and accessibility of the ombudsman institution to the public; a criterion also claimed as an “effectiveness factor” applicable to all NHRIs by the United Nations High Commission for Human Rights.<sup>3</sup> It may seem obvious that a public complaints mechanism or monitoring body must be accessible by the public: if the public does not know that the institution exists, or does not understand its function, the institution will lose its operative purpose; and certainly, most institutions dedicate some resources to this ‘marketing’ function. Nevertheless, given the fact that increased accessibility leads to a greater workload and potentially more difficult cases to deal with, newly established and underresourced institutions may be reluctant to seek that extra challenge by improving their visibility. Many institutions already face huge numbers of complaints without sufficient human and financial resources to deal appropriately and efficiently with the workload. This is particularly so for recently established institutions, for example in the South Caucasus, the Central Asian Republics and South East Europe. Similarly, although most institutions recognize the need for a presence in remoter areas in the form of local offices, the most appropriate way to structure the relationship between national and regional offices, both legally and operationally, remains an open question for many countries.<sup>4</sup> As the role of the institution is to protect the public from maladministration and human rights abuses, and given that complaints often concern a lack of effective accessibility to the public authorities, it becomes even more essential that ombudsmen and NHRIs have carefully considered and implemented operational plans, ensuring that their own services are accessible while also guaranteeing service equity.

Service equity comprises more than just non-discrimination. Just as human rights must be able to be *effectively* enjoyed, it is important that there is *effective* access to the ombudsman’s services. In this sense, arguments in support of positive discrimination to ensure that members of minorities effectively enjoy the same level of rights as the majority population, also apply to having effective remedies for breaches of those rights. An ombudsman office or NHRI can provide a remedy for human rights violations, and as such, is an important aspect of the implementation of human rights. In practice, equitable service is different than equal service. In order to ensure equitable service, it will generally be insufficient for an ombudsman institution to act without discrimination between persons; instead, special policies and operational procedures, with an emphasis on proactive solicitation of complaints and information, will be necessary to ensure that vulnerable groups are reached and heard. In the words of the Finnish

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3 Roy Gregory, “Building an Ombudsman Scheme: Statutory Provisions and Operating Practices”, in Linda C. Reif (ed.), *The International Ombudsman Anthology* (Kluwer Law International, The Hague, 1999), 129-168, at 131; United Nations Centre for Human Rights, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (United Nations, Geneva, 1995), 10, cited in Linda C. Reif, “Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection”, 13 *Harvard Human Rights Journal* (2000), 23-24.

4 Comments of international ombudsman consultant Dean Gottehrer, UNDP Ombudsman Roundtable, Karlovy Vary, 11-13 May 2005, notes on file with the author.