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“OMBUDSMEDIATOR” ON A GLOBAL SCALE**

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THE DEVELOPMENT OF THE “OMBUDSMEDIATOR” ON A GLOBAL SCALE*

Daniel Jacoby**

Summary

In twenty years, the number of mediator and ombudsman institutions in eighty-nine countries has risen from forty-seven to 321: nearly a 700 percent increase. States establishing such institutions have almost doubled. Aside from these independent institutions, public and private organizations have developed that are somewhat analogous to “ombudsmediators”, although they do not have an independent status.

The “ombudsmediator” has certain characteristics: an independent status ensuing from the nature of the constitutional instrument, specificities associated with the manner in which the incumbent is appointed and other elements relative to his mandate, and the nature of his relations with the administrative system. He receives complaints, investigates and makes recommendations to public authorities. He enjoys immunities and his investigations are confidential. As an “appeal body”, he must also account for his actions to the authorities and the public.

The institution includes general and specialty “ombudsmediators”, at national, regional and local levels. It differs from related agencies such as nongovernmental human rights organizations, “executive ombudsmen” and “corporate ombudsmen” in the private sector. Nonetheless, “ombudsmediators” and human rights commissions have many similarities.

This unique institution owes its development to political factors associated with the advent of democracy and the emergence of human rights. Its evolution is also related to the fact that the institution responds to the expectations of citizens (accessible, quick, credible, democratic and effective) and government authorities (certified, noncoercive, nonpartisan, inexpensive, reforming and flexible.)

“Ombudsmediators” are active in Africa, Asia, Australasia and Oceania, the Caribbean and Latin America, North America and Europe. They meet regularly in their region and some are regrouped in regional associations; most of them are members of the International Ombudsman Institute.

The multiplicity of the role of an “ombudsmediator” and his areas of activity make for a versatile institution that has acquired a superior level of professionalism. These institutions are not only independent public agencies that prevent and remedy injustices committed by government authorities, they are also incontestable leaders in the democratization and globalization of human rights.

* This paper has been translated from the original French version.

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Introduction: The Spectacular Development of the Institution

The institution of the ombudsman or mediator has seen considerable international growth in recent decades. A study conducted by Larry Hill between 1975 and 1977 revealed the existence of forty-seven institutions.¹ More recently, in May 1996, Professor Donald C. Rowat of Carleton University in Ottawa, during the North American Congress of the “United States Ombudsman Association”, counted 191 general “legislative” ombudsmen or mediators working at national, regional or local levels.² He also identified 101 specialty legislative ombudsmen, for a total of 292 institutions in seventy-six countries.³

Following a recent update, I can affirm that there are a minimum of 220 general and 101 specialty ombudsmen or mediators, for a total of 321 institutions in eighty-nine countries,⁴ including the European Union Ombudsman. However, this number also includes offices that have been recently set up, but that are not yet operating.⁵ All told, in twenty years, the number of ombudsmen has increased by approximately 700 percent and the number of states in which they are found has almost doubled.

Aside from ombudsmen or mediators who satisfy the characteristic requirements of such an institution,⁶ other similar types of public and private complaint-settlement mechanisms have developed. Professor Rowat lists 416.⁷

After having defined the institution and highlighted its characteristics, I will point out the various types of ombudsmen according to their areas of specialty, give an overview of similar organizations and classify the factors influencing the development of the institution. After having drafted a review of the institutions’ activities on a global scale, I will examine their future prospects.

Definition and Characteristics of the “Ombudsmediator”⁸

The “ombudsmediator” has certain characteristics that distinguish it from related organizations or those bearing the same title.

Definition

The ombudsman or mediator is an independent public institution set up pursuant to an act of the legislature to investigate violations of citizens’ rights and maladministration by the government, as well as to make recommendations to remedy injustices and dysfunctionalities.

Characteristics

One of the institution’s essential characteristics is its independent status.

1. Independence

Independence implies many factors: the nature of the institution’s constituting statutes,

the manner in which the incumbent is appointed and other elements related to his mandate and the nature of his relationship with the authorities.

(a) In Accordance With the Constituting Statutes

It is essential, for many reasons, that the institution be set up pursuant to an act of the legislature (statutory law) or to the constitution (organic law).

First, the constituting law stipulating the mandate and powers of the institution ensures it significant stability. A position created as a result of a simple administrative decision is not guaranteed independence and permanence, since it can be easily modified. Even in states where the position is sanctioned by the constitution, a normative text provides for its implementation. An institution can also be created by delegated legislation.⁹

The constituting statutes must be issued by a legislative branch, which varies according to the level of government. The national mediator is set up by an act of Parliament. The regional mediator is created by a regional legislative act and the local mediator is set up by local legislative powers. As such, a municipal ombudsman must be created by the community's most stable legislative instrument: a simple decision by the mayor or executive committee does not guarantee independence and permanence.

(b) In Accordance With the Manner in Which the Incumbent is Appointed and Other Elements Related to his Mandate

The method of appointing an incumbent must be provided for by the constituting law or the constitution. He may be appointed or recommended by Parliament. In a presidential regime, wherein the president appoints the incumbent, it is preferable that parliamentary authorities participate in the selection or that they are at least consulted.

Other elements contribute to setting the level of independence of the incumbent: his mandate must be for a fixed period, renewable or not. He may be removed from office and, if so, only with good reason and only by authorities whose status guarantees the objectivity of the removal. As such, a mediator appointed by Parliament can only be removed from office by the latter or through the intervention of a judicial authority. The removal of the incumbent appointed by the chief of state can only be effected with the consent of or notification by the Parliament or following an investigation or decision by an independent authority such as a court of law.

(c) In Accordance With his Relationship With the Authorities

To ensure his independence, the institution must not be subordinate¹⁰ to the authorities over which it exercises jurisdiction. "The comptroller cannot at the same time be the comptrollee." Independence can expressly fall under provision of law specifying that authorities can neither interfere in the affairs of the institution nor dictate its conduct. For want of express provision, independence may be inferred from the general economy of the law.

By way of illustration, a government minister or administrator, as well as governmental

organizations exercising supervisory authority over public agencies, cannot be considered as ombudsmen. Such is also the case for Attorneys-General, Solicitors-General, ministers responsible for monitoring public agencies and internal auditors.

In summary, an institution, including its incumbent, that fails the test of independence plays a subordinate role in which the incumbent is likened to an officer of the agency being monitored and, in so doing, is virtually in conflict of interest or subject to influence.¹¹ As such, they may be referred to as “executive ombudsmen” as opposed to “legislative ombudsmen”,¹² depending on their classification.

2. Duty to Receive Complaints from Citizens

The “ombudsmediator” must receive complaints from citizens or companies. However, under the majority of constituting laws, he can also act on his own initiative, by means of *autoseisin*. In some states, the ombudsman acts through a parliamentary intermediary (MP filter), as in the United Kingdom (Parliamentary Commissioner for Administration) or in France (*Médiateur de la République*). This method does not call into question the status of the mediator. Moreover, in this case, if the institution acts by means of regional delegates, the latter are generally able to handle citizens’ complaints directly. This is true of the *Médiateur de la République*.

3. Investigative Powers

To form an opinion, the institution must be able to compile the elements it deems necessary. Hence, it exercises investigative powers. Therefore, it has the right to constrain witnesses, obtain pertinent documents and inspect premises under threat of penalty for non-compliance. Certain laws, however, allow for a less coercive system by simply inviting the government to collaborate with the institution in its investigation, with or without penalty in the event of non-compliance.

4. Power to Recommend

The “ombudsmediator”, as administrative recourse for the resolution of disputes, is characterized by his power to recommend. This power is an inherent part of his role as spokesperson for the citizens he represents. Nonetheless, unlike a court of law or an arbitrator, he cannot render binding decisions.

However, a mediator may in particular instances, according its statute, address a court in order to clarify his jurisdiction or powers. Some offices can bring proceedings before courts or obtain injunctions. It goes without saying that legal remedy can only be exercised when a law has been violated: the “ombudsmediator” cannot use it to enforce a recommendation aimed at modifying a standard simply because it is unreasonable, but legal, or to undertake the reform of a given field.

5 . “Ombudsmediator” Immunities

“Ombudsmediators” enjoy various immunities. Some cannot be compelled to testify

before a court and others, in addition to this immunity, cannot be sued for damages with regard to the content of their annual report or their public interventions, provided that they are carried out in good faith.

6. Confidentiality of the Complaint and the Investigation

Citizens' complaints and ensuing investigations are handled confidentially.

7. Accountability

The "ombudsmediator" gives an account of his activities to the governing authorities, namely in a report he submits annually or in special reports. This authority varies according to the judicial system: the parliamentary institution is accountable to the Parliament. In a presidential government, the ombudsman is accountable to the president, however, the ombudsman must also submit a report to the legislative body. Specialty ombudsmen may be obligated to report to a minister and to Parliament. Ombudsmen are ultimately accountable to the general public.

8. "Appeal Body"

An ombudsman is often an "appeal body". For a complaint to be handled, the citizen must generally have exhausted all other administrative recourses. The "ombudsmediator" is not a substitute for the administrative system. He offers it the chance to correct, or have the issue corrected, thus, preserving the accountability of the organization being monitored.

The Classification of "Ombudsmediator" According to Their Jurisdiction and the Order of Government

Various types of ombudsmen are noted: the general legislative and the specialty legislative, both of which exist at national, regional and local levels.

The General Legislative Ombudsmen

These ombudsmen have jurisdiction over all or most of the administrative system belonging to a given order of government. As such, there are 220 general legislative ombudsmen in the world at national, regional and local levels.

1. National Institutions

There are eighty general legislative offices at the national level. Nevertheless, single or federate states do not all have general legislative ombudsmen: namely Canada, the United States, India and Italy. Some institutions, such as the French *Médiateur de la République*, also have jurisdiction over local governments.

2. Regional Institutions

Regional offices include those that have general legislative jurisdiction over regional orders of government, which may be states that make up a federation, as well as provinces, administrative territories, federal or regional districts.¹³

Regional offices occasionally have jurisdiction over local governments. In Canada, British Columbia and Manitoba ombudsmen have jurisdiction over their province's municipalities, except in Manitoba, where the city of Winnipeg has its own "legislative ombudsman".

There are at least ninety regional, general legislative ombudsmen in the world.

3. Local Institutions

Local ombudsmen acting at a local administrative level are classified as local, general legislative systems; these are mainly found in universities and municipalities.

Specialty Ombudsmen

Besides general legislative offices, there are also specialty ombudsmen who act at national, regional and local levels. These ombudsmen have rights of review in specific areas of an administrative system. They are called "specialty"¹⁴ ombudsmen. There are 102 of them.

1. National Level

For example, Canada, which does not have a general legislative ombudsman at the federal level, created six federal specialty ombudsmen in the fields of access to information, privacy, official languages, penitentiary services, law enforcement and human rights. New Zealand has a national ombudsman for environmental protection. The United States, at the federal level, has an ombudsman with jurisdiction over long-term care units.

2. Regional Level

Some Canadian provinces have "specialty" ombudsmen, namely in the fields of law enforcement, privacy and child protection.

3. Local Level

The United States has many of these local "ombudsmediators." At the local level, municipalities may have ombudsmen in specialized fields, such as health care and human rights. In the same way, several university ombudsmen are considered to be local specialty ombudsmen and not local, general legislative offices.

Corollary: Organizations Sharing Similarities with the "Ombudsmediator"

Several organizations in the public and private sectors resemble that of the

“ombudsmediator”.

Public Sector

1. Public Organizations Sharing Similarities with the “Ombudsmediator”

Some public organizations share similarities with the institution of the ombudsman, namely their powers of investigation and recommendation. However, they do not have an independent status. They consist mainly of internal organizations within a government and report to ministers or the organization’s directors.¹⁵ The United States and Canada have many. They also take on the form of complaint review boards within a ministry or public agency.

According to English and American traditions, these offices are classified as "executive ombudsmen", as opposed to “legislative ombudsmen”.¹⁶ Donald C. Rowat distinguishes them according to their jurisdiction and lists ninety-six general executive ombudsmen including eleven at the national level,¹⁷ twenty at the regional level¹⁸ and sixty-five at the local level.¹⁹

According to Rowat,²⁰ there are also at least 155 “specialty executive ombudsmen”, including 138 in the United States. These offices are mainly found in universities, public health care institutions, penitentiary services, schools, the military, the environment, law enforcement and taxation departments.

2. Human Rights Commissions in Relation to “Ombudsmediators”

Several human rights commissions are comparable to the “ombudsmediator”, due to their independent status and powers of investigation and recommendation.

Human rights commissions are national organizations regulated by the “Paris Principles”, which are also aimed at ombudsmen.²¹ Several of them have jurisdiction over public and private sectors. They can be general and specialty institutions. Several intervene only in matters of discrimination and other types of exclusion, even though they also play a role in promoting human rights. Such is the case in Quebec, with the *Commission des droits de la personne et des droits de la jeunesse* (Human and Children’s Rights Commission) and, at the federal level, with the Canadian Human Rights Commission. Others, such as the National Human Rights Commission of Mexico, have broader jurisdictions. As a general rule, these offices also handle maladministration pertaining to human rights.

Traditional classification distinguishes between ombudsmen and human rights commissions and requires that several nuances be made. Some people believe that ombudsmen handle only governmental dysfunctionality (maladministration) and that the protection of human rights is the mission of human rights commissions alone. The actual situation is not so clear, as ombudsmen often intervene to promote and protect human rights. Hence, the duty of an “ombudsmediator” with jurisdiction over a penitentiary system is to protect the rights of inmates according to international instruments. The same applies when he intervenes in governmental decisions involving social and economic rights governed by international covenants.

It is my opinion that ombudsmen and human rights commissions with these characteristics exercise complementary responsibilities and, in so doing, both play a major role in defending the rights of citizens from their governments' actions. In states where the two types of institutions exist, there can be a certain overlapping of mandates.

Nevertheless, the activities of second-generation "ombudsmediators", mainly those in Latin America, clearly involve maladministration and human rights. They constitute the way of the future in the development of the "national ombudsman" targeted by the "Paris Principles".

Private Sector

In the private sector there are "corporate ombudsmen" and other nongovernmental complaint mechanisms.

1. Corporate "Ombudsmen"

Corporate "ombudsmen" are multiplying at an incredible rate. Goods- or service-related business firms and the media are implementing systems to receive complaints from customers, as well as company employees. There are 134 in the United States and Canada. They are also found in Australia, New Zealand and several European states. It goes without saying that these systems do not have the same independence as ombudsmen. Hence, they are comparable to "executive ombudsmen" in the public sector.

Moreover, several business firms operating in a given field of activity are grouped into associations, which also have "ombudsmen" which, in many cases, are independent. In the United Kingdom, several of these "association ombudsmen" render binding decisions. Their areas of activity include banking, insurance, construction, real estate, investment brokerage and pensions.²² Some professional orders in Scotland and England also have "association ombudsmen", namely in the legal professions.

In conclusion, the past few years have seen spectacular growth in the popularity of "ombudsmediators", as well as in other types of complaint mechanisms.

Unavoidably, the "ombudsmediator", like any political institution, appears to have been created and adapted according to the cultural, social and political context of the society in which it evolves. It is, therefore, conditioned by its environment. This explains the wide variety of "ombudsmediators" and, secondarily, similar organizations. However, the term "mediator" or "ombudsman" does not necessarily signify that the institution fulfills the requirements of an "ombudsmediator". "The name Ombudsman is a catchy one".²³ Hasty generalizations should be avoided.

2. Other Nongovernmental Complaint Mechanisms

Other nongovernmental organizations that promote and defend human rights, as well as advocacy groups for citizens with disputes involving the government or the private sector, are

flourishing. These organizations, which are particularly community-based, sometimes receive government funding and generally defend specific groups: “Many advocates urge government and communities to consider the perspective of those who have been historically under-included. Many groups who have been marginalized or disempowered have found it increasingly important to work with advocates who support them.”²⁴ These organizations are often politically active and not only strive to settle disputes, but also to promote the well being of the groups they represent.

These organizations are generally made up of volunteers, legal aid lawyers and various consultants. They are active in areas such as human rights, the environment, industrial relations, workplace accidents, children’s rights and welfare. They mainly act as advocates and are not neutral.

Factors in the Development of the “Ombudsmediator”

General Considerations

There are many factors involved in the development of the institution of the ombudsman. Whether we go back to the Roman tribunes, the Egyptian pharaohs, the Chinese dynasties, the Swedish *justitie-ombudsman* or the Turkish *Quadi Algudat*, the appearance of advocacy groups is fundamentally associated with efforts to eliminate the arbitrary use and abuse of public powers and, gradually, with the triumph of democracy. When the state took charge of the expectations and needs of its citizens, mechanisms were created that allowed citizens’ voices to be heard. The state gave them the right to protest and complain to an independent institution about decisions handed down by the government. This highly democratic right already recognized as a parliamentary tradition was expressed through “petitions”.

The “ombudsmediator” is not the only public complaint mechanism. Legal and administrative courts, as well as alternative dispute resolution mechanisms can also be used to settle disputes between government authorities and the public.

Political Factors

The growth of the institution is mainly a result of political factors. Lack of confidence in governments has, in some states, led to the creation of the institution. The establishment of an independent mechanism for settling disputes contributes to restoring public trust.

However, the movement towards universal democratization, along with the “globalization” of human rights, constitutes a determining factor in the development of the institution. Thus, the explosion of ombudsmen in Latin America coincides with the rejection of totalitarian regimes; the growth of institutions in Africa coincides with the development of democracy. The same is true for East European countries. More and more Asian nations, such as Thailand and Vietnam, are considering setting up ombudsman offices. In sum, the institution’s development is currently associated with the appearance of democratic regimes and the international demand for the respect of human rights. The globalization of markets contributes, in some respects, to the development of democracies, the emergence of human rights and the fight against corruption.

Because the nature and characteristics of the “ombudsmediator” meet the expectations of citizens and governmental authorities, they are also factors in its development.

Meeting the Expectations of Citizens

1. Accessible

As a general rule, the ombudsman provides accessible recourse that is more within reach of citizens than other jurisdictional or nonjurisdictional dispute settlement mechanisms.

The ombudsman offers easy access because, in general, it avoids the formalities typical of judicial or governmental procedures. Complaints can often be made verbally and citizens generally are not required to attend formal meetings. The fact that recourse is free is also a determining factor. Lastly, the informal nature of the procedure makes it a personalized means to settle disputes.

2. Quick

Intervention by the “ombudsmediator” generally gets quicker results than other avenues of appeal.

3. Credible

When seeking recourse, citizens generally place more confidence in an institution like the ombudsman than in the government.²⁵ Citizens assume their cases will be examined closely and without prejudice, due to the nonpartisan and independent status of the “ombudsmediator”.

The credibility of the ombudsman is such that people turn to it for a wide range of reasons, from obtaining information on a government program or the avenues available to citizens, to validating a governmental decision or verifying information already provided by the government. Public interventions by the ombudsman help increase his credibility.

4. Democratic

The ombudsman offsets powerful, bloated bureaucracies and their cumbersome procedures, abuse, dysfunctionality and monopolistic nature. It corrects the imbalance between “David” (the citizen) and “Goliath” (the government). It, therefore, acts as an element to counterbalance the governmental system.

5. Effective

According to the Supreme Court of Canada, “the powers granted to the ombudsman allow him to address administrative problems that the courts, the legislature and the executive cannot effectively resolve”.²⁶ The institution is also effective due to its relatively high reversal rate for administrative decisions.

Meeting the Expectations of Government Authorities

While the ombudsman meets the expectation of citizens, it can also be assumed that, as a general rule, it also satisfies those of government authorities.

1. Accepted

The accessibility of the ombudsman is something governments know well. Although at times they find it “too accessible” and even—in some cases—in competition with them, they, nevertheless, recognize the advantages it offers. When incapable of settling a dispute involving a citizen, politicians will often turn it over to an ombudsman. Recourse to the ombudsman is, thus, accepted.

2. Noncoercive

The power to recommend gives the “ombudsmediator” a moral authority that governments accept more readily than binding decisions. Thus, the institution exercises a soft form of justice.

3. Nonpartisan

Unlike nongovernmental organizations that promote and defend human rights, the neutrality of the institution removes any militant tangent and makes it seem less menacing. The ombudsman must exercise nonpartisan pressure on authorities.

Furthermore, the ombudsman constitutes an additional source of information and sheds impartial light on the pertinence and quality of governmental decisions.

4. Inexpensive

For public officials, the difference between the cost of traditional justice and justice meted out by the ombudsman can be decisive. Recourse to the ombudsman can cost as little as ten percent of that of judicial or governmental tribunals. As a result, namely in several Canadian provinces, ombudsmen are regularly called upon in a wide variety of fields.

5. Mechanism of Reform

The reforming role that the “ombudsmediator” can play in parliamentary proposals for change or upcoming legislation should not be underestimated.

6. Flexible

The institution is adaptable. In several states, the express mission of the “ombudsmediator” is to protect fundamental rights and, aside from his general mandate, to act as an information, privacy and children’s rights commissioner.

Conclusion: A Unique Resource

In conclusion, as an alternative for conflict resolution, the “ombudsmediator” is a unique resource.²⁷ He is neither an arbitrator, chosen by both parties and whose decision is binding, nor a conciliator, whose main function consists of encouraging dialogue between parties with differing points of view, nor a mediator, who proposes terms of agreement, nor a court, whose decision is enforceable, nor an investigator, who submits a report on a specific case.

Nonetheless, while the ombudsman can easily adapt to the demands of the modern state, it would be a mistake to believe that he could become a substitute:

[O]mbudsmen in all their various forms have not been growing in number just to address new needs or, as could be thought, previously neglected ones.... Despite the progress in the diversification of recourse, we must not be overly smitten by the ombudsman model. It is not a universal alternative to remedies that already exist, because its effectiveness is relative.... Ombudsmen lay the groundwork for the next step—quality control, which must not be the ultimate goal in the evolution of the various forms of monitoring government actions. Administrative law has embarked on a path of diversification of remedies, and there is no turning back to single recourse formulas. The traditional image of the courthouse judge, and the less defined image of the administrative law judge, is giving way to a surprisingly symbiotic image of investigator and mediator.²⁸

The Activity of the “Ombudsmediator” According to World Regions

The statutes of the International Ombudsman Institute provide for six regions: Africa, North America, Asia, Australasia and Oceania, the Caribbean and Latin America, and Europe. Amendments to these statutes in 1996 make provision for the formation of six regional chapters of the International Ombudsman Institute that are now being set up. The following is a brief outline of the current situation in each region.

Africa

Africa has seen phenomenal growth over the past few years. Nineteen states have set up general legislative mediators and ombudsmen at a national level²⁹ and at least one national, specialty ombudsman to handle matters pertaining to ethics and corruption.³⁰

African ombudsmen and mediators held their Fifth Conference in Ghana, in September 1997. The next conference will take place in Namibia, in 1999.

In 1996, under the aegis of the International Ombudsman Institute, a meeting was held in Pretoria, uniting investigative officers from “ombudsmediator” institutions.

Moreover, Dar Es Salam University (Tanzania) accommodates the African Ombudsman Centre, directed by a board of trustees made up of “ombudsmediators” from all regions of

Africa.

North America

North America has nine general legislative ombudsmen at the regional level in Canada and seven state member ombudsmen in the United States. The region also has nine specialty ombudsmen at the national level.

American ombudsmen in the public sector are members of the "United States Ombudsman Association" (USOA). Their next conference takes place in Detroit, Michigan, in September 1998. Another association, "The Ombudsman Association" (TOA), includes organizations in the private and public sectors. Canadian ombudsmen are in the process of forming an association.

The last two Canadian ombudsmen conferences were held in Regina (Saskatchewan), in September 1997, and in Toronto (Ontario), in January 1998. The next conference will take place in Yellowknife, in the Northwest Territories.

The Quebec Ombudsman held its first meeting in June 1997 with francophone³¹ institutions, which will be creating an association at the Nouakchott (Mauritania) meeting in May 1998.

The head office of the International Ombudsman Institute is located at the University of Alberta, in Edmonton.

Asia

Asia has seven general legislative or specialty³² ombudsmen at a national level and twelve regional ombudsmen.³³

The ombudsmen formed an association (Asian Ombudsmen Association) which meets once a year and is open to related organizations. The last conference took place in Seoul, Korea, in 1997, and the next one will be held in Macao, in May 1998.

Australasia and Pacific

This region includes eight national ombudsmen,³⁴ seven regional, general legislative ombudsmen and three specialty ombudsmen. The ombudsmen formed an association open to related organizations. The last conference took place in Darwin (Northern Territory), in Australia.

The Caribbean and Latin America

Latin America and Caribbean region has also seen spectacular growth in recent years. The Caribbean lists seven national ombudsmen,³⁵ while Latin America lists sixteen national

ombudsmen, forty-one regional offices and nine local “ombudsmediators.”

They also created a federation that is open to similar organizations. The “ombudsmediators” held their first conference in Mexico, in 1996, and the second in Toledo (Spain), in 1997. The third will take place in Lima (Peru), in September 1998.

Most Latin American “ombudsmediators” also have jurisdiction over human rights issues and, as such, have established functional relations with international organizations. As such, in November 1997, the fourth workshop aimed at national institutions for the promotion and defense of human rights was held in Merida, Mexico.

Caribbean “ombudsmediators” will hold their first meeting in Antigua and Barbuda, in March 1998.

Europe

In Europe there are at least twenty-nine general legislative ombudsmen at a national level,³⁶ thirty-seven regional institutions and thirty-three local “ombudsmediators.” There are also at least twenty national specialty ombudsmen.

The national ombudsmen belong to an informal association that meets annually. The last conference took place in Israel, in September 1997, and the next one will be held in Malta, in September 1998. The Netherlands Ombudsman is responsible for publishing a national ombudsman report three times a year.

Europe also has a European Institute of Ombudsmen, which holds conferences on a regular basis. Furthermore, the European Council organizes round tables for national and regional “ombudsmediators.”

Future Prospects

Within his jurisdiction, the “ombudsmediator” intervenes as a dispute settlement mechanism. He examines not only the legality of government decisions, but also whether they are reasonable and equitable. He carries out all-encompassing, systemic investigations. Some ombudsmen adjudge on proposals for reform, others on upcoming legislation. In several instances, the “ombudsmediator”, within the scope of his activities, will propose guidelines and checklists aimed at improving the quality of services and decisions, as well as the respect for “rules of natural justice”. He informs parties of their rights. He also collaborates with private defenders of human rights, as well as with other public human rights institutions. Some even tackle the field of ethics. The “ombudsmediator” increasingly intervenes in the field of human rights, and several are called upon to administer in various areas such as the fight against corruption, law enforcement, privacy protection and labour relations in the public sector.

This kaleidoscope of activities begs the question, has the “ombudsmediator” become a melting pot or, simply, a versatile institution capable of combining several mandates without giving way to incoherence?

With the rise in the number of ombudsmen from forty-seven to 321, it can no longer be said that the “ombudsmediator” suffers from the same degree of isolation as he did twenty years ago. In association with his colleagues, he plays a role in universal dynamics. Due to the regional and international structure of the institution, the International Ombudsman Institute’s role will become more and more important, with the setting up of regional constituents. The “ombudsmediator” increasingly coordinates his actions with international organizations.

Lastly, the institution has acquired a superior level of expertise and professionalism that there is no turning back from. As a public institution, although independent from the state, the “ombudsmediator” has become an essential player in the prevention and correction of injustices committed by government authorities, as well as an indisputable leader in the democratization and globalization of human rights.

Endnotes

¹ Larry Hill, “The Self Perceptions of Ombudsmen: A Comparative Survey”, in *International Handbook of the Ombudsman: Evolution and Present Function*, Gerald E. Caiden, ed. (Westport, CT: Greenwood Press, 1983) at 43.

² Donald C. Rowat, “A World Wide Survey of Ombudsmen” *Occasional Paper Number 60* (International Ombudsman Institute, Alberta, March 1997) table 2 (does not include the European Union Ombudsman).

³ *Ibid.*, table 5.

⁴ This update of Professor Rowat’s presentation takes into account the ombudsmen and mediators who are voting members of the International Ombudsman Institute as well as nonmembers. I took into account the latest memberships to the International Ombudsman Institute as well as lists of ombudsmen and mediators included in certain 1996 regional reports of the Institute’s Regional Vice-Presidents for the following regions: Africa, North America, Asia, Australasia and Oceania, Caribbean and Latin America and Europe.

⁵ Namely Bolivia, Ecuador and Greece.

⁶ See section entitled “Definition and Characteristics of the ‘Ombudsmediator’”.

⁷ Rowat, *supra* note 2, tables 6, 7, 8 and 9.

⁸ In the text, the words “ombudsman”, “mediator” and “institution” are indiscriminately used to qualify the “independent” or “legislative” ombudsman. The neologism “ombudsmediator” is also employed.

⁹ The requirement that an “ombudsmediator” be set up through a legislative process explains the use of the expression “legislative ombudsman”, which is not to be confused with the expression “parliamentary ombudsman”, which qualifies the mediator appointed by the Parliament or arising thereunder.

¹⁰ Daniel Jacoby, “Independence and Accountability of the Ombudsman: Myths and Reality”, paper presented at the Canadian Ombudsman Conference, Toronto, Ontario, November 1993.

¹¹ Rowat, *supra* note 2.

¹² See note 9.

¹³ Namely: Australia, Canada, Spain, United States, Italy and Switzerland.

¹⁴ They are also called “single purpose ombudsmen”.

¹⁵ See section entitled “In Accordance With His Relationship With the Authorities”.

¹⁶ *Supra* note 9.

¹⁷ For example, the Procurator General of Bulgaria, the Procuratorate of China, the Public Complaints Bureau of Malaysia and the Fiscal General of Venezuela.

¹⁸ The Complaints and Suggestions Bureau of Sarawak (Malaysia).

¹⁹ Rowat, *supra* note 2, table 7.

²⁰ Rowat, *supra* note 2.

²¹ The “Paris Principles” were adopted by organizations for the promotion and protection of human rights during a meeting in Paris, in 1991, and endorsed by the Human Rights Commission, in 1992, and by the United Nations General Assembly, in 1993 (Res. 48/134). These principles define the status and characteristics of these institutions.

²² Professor Donald C. Rowat lists thirty-one associations with such systems in the Commonwealth and Europe. See note 2, table 9.

²³ Stanley V. Anderson, *Ombudsman Papers: American Experience and Proposals*, (Berkeley, California: Institute

of Governmental Studies, 1969) at 43.

²⁴ “Advocacy”, in *Ombudsreport (Annual Report)*, Office of the Ombudsman of British Columbia (1993) at 6.

²⁵ An opinion poll conducted by the Québec Ombudsman in 1993 revealed that more than seventy-two percent of those involved in disputes with government agencies do not believe they can win.

²⁶ *B.C. Development Corp. v. Friedman*, [1984] 2 S.C.R. 447 at 461.

²⁷ Daniel Jacoby, “Le recours au Protecteur du citoyen comme solution de rechange a la resolution des conflits”, in *Alternative Dispute Resolution/Solutions de rechange au règlement des conflits* (Sainte-Foy, Quebec: Laval University Press, 1993) at 195-218. See also Daniel Mockle, Zero contentieux. “L’ouverture d’une troisième voie en droit administratif par le règlement amiable des différends” (1991) 51 Bar Review 45-126.

²⁸ Daniel Mockle, “Le développement des formules non juridictionnelles inspirées du modèle de l’Ombudsman”, in *Nouvelles pratiques de gestion des litiges en droit social et du travail* (Cowansville, Ontario: Yvon Blais Inc., 1994) at 91 and 93.

²⁹ Burkina Faso, Lesotho, Madagascar, Malawi, Mauritania, Mauritius, Namibia, Nigeria, Senegal, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Tunisia, Uganda, Zambia, Zimbabwe. Algeria, Gabon, Ivory Coast and Morocco have executive ombudsmen.

³⁰ Tanzania, “Enforcement of Leadership Code Commission.”

³¹ Belgium, Burkina Faso, Canada (federal level), Gabon, Haiti, the Ivory Coast, Madagascar, Mauritius, Mauritania, New Brunswick (Canada), Quebec (Canada), Saint Lucia, Senegal and Vanuatu participated in this meeting organized mainly in collaboration with the ACCT.

³² Japan, Macao, Pakistan, South Korea, Sri Lanka, Taiwan (Macao will become a special administrative territory of China in 1999). Thailand will create an ombudsman.

³³ Hong Kong and India (Hong Kong became a special administrative territory of China in 1997).

³⁴ Australia, Cook Islands, Fiji, New Zealand, Papua New Guinea, Solomon Islands, Western Samoa, Vanuatu.

³⁵ Antigua and Barbuda, Barbados, Haiti, Jamaica, Puerto Rico (also included in the North American region), Saint Lucia, Trinidad and Tobago.

³⁶ In the following states: Austria, Belgium, Bosnia-Herzegovina, Croatia, Cyprus, Denmark, Finland, France, Germany, Georgia, Hungary, Iceland, Ireland, Israel, Latvia, Liechtenstein, Lithuania, Malta, Norway, Netherlands, Poland, Portugal, the Russian Federation, Slovenia, Spain, Sweden, United Kingdom.