



# Monitoring and Investigating the Security Sector



# Monitoring and Investigating the Security Sector

*Recommendations for Ombudsman  
Institutions to Promote and Protect  
Human Rights for Public Security*



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**Interpreters at the VIIth  
International Roundtable  
for Ombudsman  
Institutions from Eastern  
Europe and CIS:**

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# Foreword

*Kathleen Cravero  
and Ambassador Dr. Theodor H. Winkler*

## Foreword

We are pleased to present the second issue of the Democratising Security Series, jointly published by the United Nations Development Programme (UNDP) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF). This issue focuses on the role of *ombudsman*<sup>1</sup> institutions in monitoring and investigating the security sector. It argues that independent *ombudsman* institutions can play an important role in strengthening democratic oversight and furthering human and public security.

Despite the fact that most *ombudsman* institutions have relatively broad mandates and corresponding powers, which also endow them with competency over human rights abuses in the security sector, they encounter many problems when they start investigations. Baseline research on the relationship between *ombudsman* institutions and the security sector presented in this publication shows that the security sector remains a closed domain, and that there is a significant need and potential to strengthen the work of *ombudsman* institutions on security sector oversight.

*Ombudsman* institutions can provide a viable forum for the investigation and resolution of human rights violations committed by security sector agencies; they can help to bring national legislation into conformity with international standards; they can monitor the security sector; and they can educate security sector officials about their obligations and the general public about their rights.

So far, there is only little guidance available for *ombudsman* institutions on how they can best structure their work on human and public security. This publication intends to close this gap and presents action-oriented recommendations, which have benefited greatly from practical input presented by *ombudsman* institutions from Eastern Europe and the Commonwealth of Independent States.

<sup>1</sup> The term *ombudsman* is the Swedish word for an official appointed to receive and pursue cases of breaches of administrative duty, first established in Sweden in the 18th century. To an English speaker this term does not appear to be gender inclusive since it includes the word 'man'. UNDP is an international organization with the mandate of promoting gender equality. UNDP makes a point of using gender inclusive terminology. Therefore, the UNDP Regional Centre for Europe and the CIS in Bratislava has decided to italicize the word to indicate that it is a foreign word. The Swedish word *ombudsman* is used to modify the term institution (i.e. *ombudsman* institution) and meant to refer to national institutions headed by women and men. The head of the *ombudsman* institution, the officeholder, will be referred to as the ombudsperson throughout this publication.

With a view to furthering the democratisation of security, we encourage *ombudsman* institutions to use the findings and recommendations presented in this publication. We also call on governments and international aid organizations to provide adequate support to *ombudsman* institutions and their work on security sector oversight.



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# **Roundtable Consultation on the Relationship between *Ombudsman* Institutions and Security Sector Agencies in the Baltic States and the Commonwealth of Independent States**

*Report on the VIIth International Roundtable  
for Ombudsman Institutions in Karlovy Vary, 18  
– 22 November, 2006*

*Ilona Mikoczy*

## Introduction

Security sector oversight in the Baltic States and the Commonwealth of Independent States (CIS) is an issue of utmost importance that has not lost its actuality and high relevance since the collapse of the Soviet Union, when these countries started their transition towards democracy. The UNDP Bratislava Regional Centre has built a partnership with the Geneva Centre for the Democratic Control of Armed Forces (DCAF) to support democratic oversight of the security sector in this region. One of the key findings of a parliamentary roundtable on security sector oversight held in October 2005 was that the parliamentarians identified *ombudsman* institutions as useful redress mechanisms for human rights abuses committed by the security sector.

Since the relationship between *ombudsman* institutions and security sector agencies has not yet been explored in detail, UNDP and DCAF, together with international experts on *ombudsman* institutions and human rights, agreed to elaborate recommendations for *ombudsman* institutions regarding their role in security sector oversight. To insure the applicability and relevance of these recommendations, a mapping of the actual needs and the overall context of the situation as well as a stakeholder consultation were considered essential.

## Context

At present, a majority of the now independent republics of Europe and the CIS have established some form of national human rights institution with the mandate to promote and protect human rights in their countries. The UNDP Bratislava Regional Centre seeks to contribute to the protection and promotion of human rights in Eastern Europe and the CIS through the strengthening of these organizations. For the past 4 years, the Centre has collaborated with the Government of the Czech Republic to convene roundtables for *ombudsman* institutions to facilitate an exchange of experiences.<sup>1</sup> Topics of these roundtables vary and range from cases of discrimination, investigation mechanisms and handling of complaints. Since UNDP already had this active interaction with the *ombudsman* institutions of the region, it was easy to build on the existing cooperation and raise a sensitive issue through the regional network, with trust established among its members. Therefore, in 2006, the role of *ombudsman* institutions in preventing and redressing human rights violations committed by security sector agencies was discussed at the VIIIth International Roundtable for *ombudsman* institutions from the Baltic States and the CIS.

The purpose of the roundtable was to discuss the findings of a questionnaire survey among the network members, review the most important opportunities and chal-

<sup>1</sup> [http://europeandcis.undp.org/?wspc=subpractice-622\\_h](http://europeandcis.undp.org/?wspc=subpractice-622_h)

lenges that *ombudsman* institutions face when interacting with security sector agencies in the CIS, and to consult the stakeholders on the draft recommendations.

Ombudspersons and senior staff of *ombudsman* institutions of the following countries were present at the roundtable: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia and Uzbekistan. These country delegations were joined by UNDP staff and international experts.

## Main Themes

The consultation on the relationship between *ombudsman* institutions and security sector agencies started with a presentation by Dr. Philipp Fluri, DCAF Deputy Director, who reviewed the role of the military ombudsperson in Germany and in Canada and initiated a discussion on the role of *ombudsman* institutions in security sector oversight.

The role of the military ombudsperson is very specific in those countries where it exists. The military ombudsperson solely exercises oversight of the defence sector and helps to ensure that it observes the principles and practice of good governance. The military ombudsperson addresses complaints about improper and abusive behaviour in the military as well as shortcomings in military procedures, and formulates recommendations for corrective action. The DCAF Backgrounder on military *ombudsman* institutions – included in this publication – contains more information on this type of institution.<sup>2</sup>

There is no military *ombudsman* institution in any of the Baltic States or countries of the CIS. However, since the security sector agencies are public institutions, the participants discussed how the experiences of the military ombudsperson apply to the work of *ombudsman* institutions in the region when dealing with security sector agencies. A clear consensus emerged that ***ombudsman* institutions must address human rights violations by security sector agencies and strengthen their capacity to do so effectively.**

The cooperation with the different security sector agencies varies from country to country in the region. Some issues however, like the **challenges presented by traditions of secrecy and limited access to information**, including confidential and internal information, are common. It was generally accepted that it is important to learn from the experiences of the military *ombudsman* institution, not only purely on human rights grounds, but also for the efficiency of the oversight of the security sector. Mr. Richard Carver, international human rights expert, also suggested that *ombudsman* institutions should take the initiative to review security sector laws for consistency with the laws establishing the *ombudsman* institution, since this would facilitate collaboration between the *ombudsman* institution and security sector.

<sup>2</sup> DCAF Backgrounder: [http://www.dcaf.ch/publications/bg\\_military\\_ombudsman.cfm?nav1=4&nav2=1](http://www.dcaf.ch/publications/bg_military_ombudsman.cfm?nav1=4&nav2=1)

### Box 1: Challenges for *ombudsman* institutions when monitoring and investigating the security sector

At the roundtable in Karlovy Vary, the staff of *ombudsman* institutions identified the most critical challenges they face when dealing with the security sector:

1. Lack of knowledge by security sector officials and civilians on human rights.
2. The security sector consists of very closed institutions; secrecy dominates and information exchange with *ombudsman* institutions is scarce and irregular.
3. *Ombudsman* institutions in the region lack resources to hire specialized staff and independent experts.
4. Not all the *ombudsman* institutions have legislative initiative.
5. Insufficient legal basis for the protection of human rights of officials of security sector agencies.
6. Lack of cooperation between *ombudsman* institutions and police and military academies on human rights education.
7. Limitations placed on *ombudsman* institutions when trying to access all relevant institutions.

## Examples from Practice

The fact that delegations were familiar with each other from previous roundtable meetings facilitated an open discussion on a politically sensitive issue and also an honest sharing of experiences.

The **Russian delegation** reported that their cooperation with the security sector structures is quite well developed. Some of the *ombudsman* institution's staff are sworn in to access classified information. According to the Russian delegation, the cooperation with the force ministries is, in most cases, well functioning. When there is a lack of understanding or will, the ombudsperson either reports the human rights violations to the Parliament or to the President. In Russia, there was a discussion on instituting a specialized military deputy ombudsperson, however so far this has not happened.

The **Kazakh delegation** highlighted that the *ombudsman* institution had an important role in the development of the Criminal Code. The law includes means that stipulate the necessity to carry out oversight of the security sector, and as a new element, the *ombudsman* institution got access to visiting prisons. By November 2006, they had conducted 33 visits either with or without notification to prisons during the course of the year. The delegation pointed out that even though they receive complaints about human rights abuses by security sector agencies, the total number

of human rights violations is relatively small and only some of the investigations are concluded successfully. The most problematic prisons to deal with are the ones for young delinquents.

The **Moldovan Ombudsman Institution** also considers proper cooperation with the military and the different armed forces most important. Since these are the organs that are charged to prevent the occurrence of human rights violations in the country and to protect public security, it is essential that the staff of these institutions be aware of civilians' rights. Consequently, the *ombudsman* institution organizes trainings and lectures for the officials from the security sector. As a positive sign, the *ombudsman* institution is also starting to receive invitations to conduct trainings on human rights, initiated by the security sector agencies themselves.

#### Box 2: Opportunities for *ombudsman* institutions to address human rights violations by security sector agencies

At the roundtable in Karlovy Vary, the staff of *ombudsman* institutions identified the opportunities they must seize to strengthen their work with regard to the security sector:

1. Establish comprehensive legal frameworks in harmony with international norms and agreements.
2. Conduct information campaigns about the mandate of *ombudsman* institutions, including on procedural aspects (possibly in cooperation with the mass media).
3. Actively use the right to access all institutions for monitoring purposes.
4. Actively use the right for the ombudsperson and his/her staff to address judicial organs.
5. Actively investigate complaints regarding security sector agencies.

These points were seen as implementable by the participants in the short- and medium-term future. They also introduced desirable activities that were, however, not seen as realistic in the short-term. These are the following:

1. Receive the right of legislative initiations.
2. Achieve the broadening of the mandate of *ombudsman* institutions over security sector related issues.
3. Strengthen public oversight as a joint venture with civil society organizations over the security sector.

## Conclusions

The delegations participated actively in the discussion regarding the recommendations at the roundtable and expressed satisfaction with the substantive content. They suggested some changes regarding the substance and also regarding the formulation. The discussions at the roundtable revealed that *ombudsman* institutions have experience in monitoring and investigating the security sector and consider this work as an important part of their mandate, but also that they face challenges and would benefit from targeted support on security sector oversight.

### Box 3: Czech Trust Fund

UNDP would like to thank and recognize the Czech Trust Fund for providing financial support for this roundtable initiative. The close cooperation between UNDP and the Czech Trust Fund was established in 2000 as the first example of “emerging donor” cooperation in Central Europe. Since then, the partnership between UNDP and the Czech Trust Fund has not only contributed expert knowledge in the areas of focus, but has also helped to build a network of contacts between Czech experts, national representatives from various countries in the region, and members of international organizations.

# ***Ombudsman* Institutions and Security Sector Oversight: Results of a Questionnaire Survey from the Former Soviet Union**

*Amrei Müller*<sup>1</sup>

# 1. Introduction

*Ombudsman* institutions' mandate to promote and protect human rights gives them an important role to play in overseeing the security sector. Although security sector agencies are responsible for guaranteeing and protecting human rights, in reality they are often responsible for human rights violations. *Ombudsman* institutions with a strong and independent oversight mandate can help prevent improper state action in this field and improve security sector governance.

This chapter focuses on the countries in the territory of the former Soviet Union, all of which, with the exceptions of Tajikistan and Turkmenistan, have established an *ombudsman* or equivalent national human rights institution.<sup>2</sup>

The role of these institutions is to protect and promote human rights that are codified in national legislation and international human rights treaties.<sup>3</sup> Many *ombudsman* institutions also have a mandate to protect people against maladministration, negligence or errors that do not amount to direct violations of their human rights. Most commonly, *ombudsman* institutions fulfill their mandates by:

- receiving and investigating complaints from individuals, legal entities or groups;
- monitoring the general situation of human rights within a country;
- educating the general public and government officials about human rights;
- developing or improving national legislation for the protection of human rights.<sup>4</sup>

In some countries there also exist special military *ombudsman* institutions with a more specific mandate to exercise oversight over human rights and administrative issues within the military command structure.<sup>5</sup> There are no such military *ombudsman* institutions in the countries of the former Soviet Union and the research summarized in this chapter focuses on *ombudsman* institutions or equivalent national human rights institutions with a general human rights mandate.

Usually, *ombudsman* institutions do not have the power to make binding decisions in response to complaints about human rights violations. However, especially in transition states, where judicial systems might be weak, politicized or otherwise incapaci-

<sup>1</sup> Mr. Richard Carver reviewed the chapter as an independent expert and made invaluable contributions. The views expressed in this article are those of the author and do not necessarily represent those of the United Nations, UNDP or DCAF.

<sup>2</sup> OHCHR, 1993: Fact sheet No. 19: National Institutions for the Protection of Human Rights, available at: <http://www.ohchr.org/english/about/publications/docs/fs19.htm> reflects on the differences between *ombudsman* institutions and other types of human rights commissions. It is pointed out, however, that the powers of *ombudsman* institutions are quite similar to those of human rights commissions.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, and the Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (The Paris Principles), principle C2; UN Doc A/RES/48/134 (20 Dec 1993), available at: <http://www.ohchr.org/english/law/parisprinciples.htm>.

<sup>5</sup> For more information on the mandate, function, etc. of the military ombudsperson, see DCAF Backgrounder on Military *Ombudsmen* in chapter 3 of this publication.

tated, they can play a very important role in protecting human rights and monitoring governmental institutions, by providing a practical mechanism for investigating and resolving human rights complaints. *Ombudsman* institutions can improve the legality and transparency of administration, and thereby improve government and security agencies' accountability.<sup>6</sup> Moreover, through their educational activities, *ombudsman* institutions contribute to establishing a stronger human rights culture within a country. This in turn will aid the overall democratization process in transition states, including the democratization of the security sector.

Security sector governance or democratic oversight of the security sector continues to be weak in the Commonwealth of Independent States (CIS).<sup>7</sup> In many of these countries, internal security forces, the police, the military, intelligence services, and the border guard remain closed institutions that are not subject to any significant civilian control. The significance of this is underlined by reports on the general human rights situation in the CIS, coming from the UN Human Rights system<sup>8</sup> and international non-governmental human rights organizations such as Amnesty International and Human Rights Watch.<sup>9</sup> Violations of human rights most frequently occur when there is a lack of transparent and effective security governance.

<sup>6</sup> See, for example: Kumar, Raj, 2004: National Human Rights Institutions: Good Governance Perspectives on the Institutionalisation of Human Rights, in: American University International Law Review, Vol 19, p.259-300, (esp. p.284); and Reif, Linda, C., 2000: Building Democratic Institutions: the Role of National Institutions in Good Governance and Human Rights Protection, in: Harvard Human Rights Journal, Vol.13, p.1-69, here p.16-19.

<sup>7</sup> Cole, Eden and Kinzelbach, Katrin (eds), 2006: Democratising Security in Transition States, Bratislava: UNDP/DCAF; see especially the contribution by Cole, Eden on "The Status of current Security Sector Governance in the CIS and its Relevance to Parliamentarians", p.17-37, available at: [http://www.oecd.org/dataoecd/8/39/31785288.pdf](http://europeandcis.undp.org/?menu=p_cms/show&content_id=FA70484D-F203-1EE9B20B2E482E43F39E;andOECD-DAC,2005: Security System Reform and Governance, DAC guidelines and reference series, OECD Publishing. The contribution by Petovar, Tanja on Security Sector Reform in the Baltics, the Commonwealth of Independent States, and Southeast Europe, p.125-141, is of particular interest; available at: <a href=).

<sup>8</sup> See, for example: Concluding Observations by the UN Human Rights Committee: on Uzbekistan, UN Doc. CCPR/CO/83/UZB, 26/04/2005, especially paras. 11 and 17; on Kyrgyzstan, UN Doc. CCPR/CO/69/KGZ, 24/07/2000, especially paras. 7, 11, and 18; on Azerbaijan, UN Doc. CCPR/CO/73/AZE, 12/11/2001, especially paras.9-13; and on the Russian Federation, UN Doc. CCPR/CO/79/RUS, 06/11/2003, especially para. 12; and Concluding Observations of the Committee against Torture: on the Republic of Moldova, UN Doc. CAT/C/CR/30/7, 27/05/2003, especially para.5; on Armenia: UN Doc. A/56/44, (paras.33-39), especially paras.37/38; on Kazakhstan, UN Doc. A/56/44 (paras.121-129), especially para.128; and the Report of the UN Special Rapporteur on Torture on his Mission to Georgia, UN Doc. E/CN.4/2006/6/Add.3, 23/11/2005; and UN General Assembly Resolution on 'The Situation of Human Rights in Uzbekistan', UN Doc. A/60/147, 16/12/2005.

<sup>9</sup> See, for example, Amnesty International, 2006: Russian Federation: Torture and forced "Confessions" in Detention, available at: <http://web.amnesty.org/library/index/engeur460562006>; or Amnesty International, 2005: Blood on the Streets – the Aftermath of the Killings in Andizhan, available at: <http://web.amnesty.org/library/Index/ENGACT600242005?open&of=ENG-KGZ>; or Human Rights Watch, 2004: Cycle of Repression- Human Rights Violations in Armenia, available at: <http://www.hrw.org/background/eca/armenia/0504>; Human Rights Watch, 2006: Undue Punishment – Abuses against Prisoners in Georgia, available at: <http://hrw.org/reports/2006/georgia0906/>.

Against this background of weak security sector governance and the role independent *ombudsman* institutions can play in building accountable and law abiding security sector agencies, the need to strengthen *ombudsman* institutions in this region is clear. In their responses to a questionnaire for parliamentarians from CIS countries on security sector oversight, which was handed out to parliamentarians in preparation of a UNDP/DCAF Parliamentary Roundtable on Security Sector Oversight in October 2005, the weakness of *ombudsman* institutions was identified as one reason for weak democratic oversight over the security sector in the CIS.<sup>10</sup>

In order to develop strategies for strengthening *ombudsman* institutions' ability to oversee the security sector, it was necessary to find out more about these institutions' current relationship to security sector agencies.

## 2. Methodology

The findings presented in this chapter are based on a questionnaire that was developed by the UNDP Regional Centre in Bratislava together with DCAF.<sup>11</sup> A copy is provided in the annex to this publication. The questionnaire focuses on the role of *ombudsman* institutions in overseeing the security sector and was completed by ten *ombudsman* institutions from the CIS and the Baltic states: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, the Russian Federation and Uzbekistan. The results were discussed with members and staff of *ombudsman* institutions from CIS countries and the Baltic states at the VIIth UNDP International Roundtable for *Ombudsman* Institutions in Eastern Europe and the CIS, which took place in Karlovy Vary, Czech Republic (18-21 November 2006). Belarus, Estonia, Tajikistan, Turkmenistan and Ukraine did not participate in the roundtable or fill out the questionnaire.

The questionnaire was structured in three sections. The first section, 'Situation analysis: security sector agencies and *ombudsman* institutions' (questions 1-5), aimed to gather statistics giving an insight into the level of interaction between *ombudsman* institutions and security sector agencies. The second section on 'Investigations of complaints about human rights violations by the security sector' (questions 6-14) intended to find out more about the specific problems that *ombudsman* institutions encounter when they investigate alleged human rights violations committed by security sector agencies. The last section of the questionnaire (questions 15-22) aimed

<sup>10</sup> The questionnaire can be found in Cole, Eden and Kinzelbach, Katrin (eds), 2006: *Democratising Security in Transition States*, Bratislava: UNDP/DCAF. The results are summarized in the contribution by Cole, Eden: *The Status of Current Security Sector Governance in the CIS and its Relevance to Parliamentarians*, p.17-37.

<sup>11</sup> The questionnaire was elaborated by Eden Cole, Dean Gottherer, Katrin Kinzelbach, Ilona Mikoczy, Amrei Müller and Sergei Sirotkin.

to map the activities *ombudsman* institutions undertake to prevent human rights violations by security sector agencies.

The following sections summarize the responses received. Sometimes, these answers were supplemented by information found in the *ombudsman* institutions' annual reports.<sup>12</sup> Other information and clarifications were obtained during discussions with the delegations during the VIIth International Roundtable for *Ombudsman* Institutions from Eastern Europe and the CIS in Karlovy Vary.<sup>13</sup>

### 3. Questionnaire Survey Results

Security sector bodies in the CIS largely remain closed institutions, despite some scattered efforts at reform. This is reflected in the difficulties that most *ombudsman* institutions reported in their dealings with these bodies.

#### a) Section I: Situation Analysis: Security Sector Agencies and *Ombudsman* Institutions

On average, just below 27% of *ombudsman* institutions' overall annual caseload<sup>14</sup> involves security sector agencies and their personnel. There is however great variation in the share of security sector cases among the countries. At one end of the range, 59% of the overall caseload of the Georgian *Ombudsman* Institution involves security sector agencies or their personnel. At the other end, complaints about security sector agencies and their personnel make up 11.9% of the Latvian *Ombudsman* Institution's overall caseload. More details on exact percentages can be found in table 1.

For the purposes of this question, 'security sector' was defined as all state services and agencies that have the legitimate authority to use force, order the use of force or threaten to use force. These would normally include the military, paramilitary units, police, border guard and other law enforcement services.

From the bar charts below<sup>15</sup>, it is apparent that in most countries a large percentage of the caseload addressed to *ombudsman* institutions on security services relates to the police. Respondents from all three Caucasian republics, Kazakhstan, Kyrgyzstan,

<sup>12</sup> Annual reports from the following institutions have been considered: Armenia, Georgia, Kazakhstan, Lithuania, Moldova, Russia and Uzbekistan.

<sup>13</sup> The author would like to thank Ilona Mikoczy for conducting these consultations.

<sup>14</sup> The overall caseload equals the number of cases that were in fact followed up by the *ombudsman* institution (including written complaints, oral requests and other contacts).

<sup>15</sup> This data is not available from the Kyrgyz *Ombudsman* Institution because it is collected in other categories. However, the Kyrgyz *Ombudsman* Institution provided the author with information that indicates the following: the highest number of cases related to security sector agencies concern the police, the second highest the military, and the third highest the border guard. The Kyrgyz *Ombudsman* Institution did not report to have received complaints about pre-trial detention centres, correction facilities and para-military forces.

Table 1: Percentage of the *ombudsman* insinuations' overall caseload, which involves security sector agencies as proven or accused human rights violators

Country	Percentage of overall caseload involving security sector agencies and their personnel
<b>Caucasus</b>	
Armenia	20.0 %
Azerbaijan	21.6%
Georgia	59.0 %
<b>Central Asia</b>	
Kazakhstan	17.5%
Kyrgyzstan	33.0%
Uzbekistan	16.0%
<b>Western CIS</b>	
Moldova	23.5%
Ukraine	46.0 %
<b>Baltic States</b>	
Latvia	11.9 %
Lithuania	20.0%

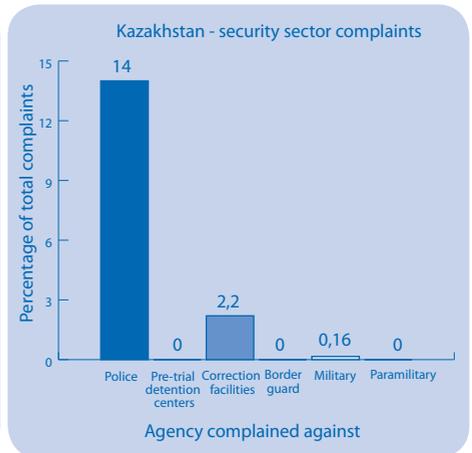
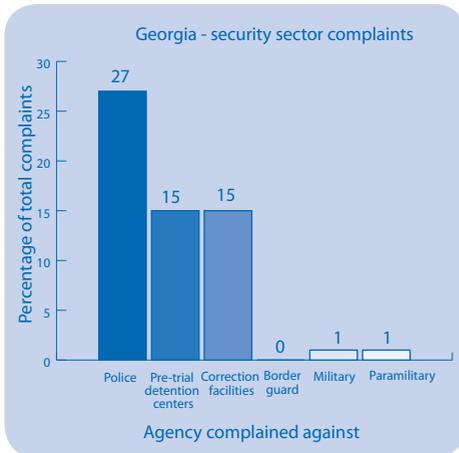
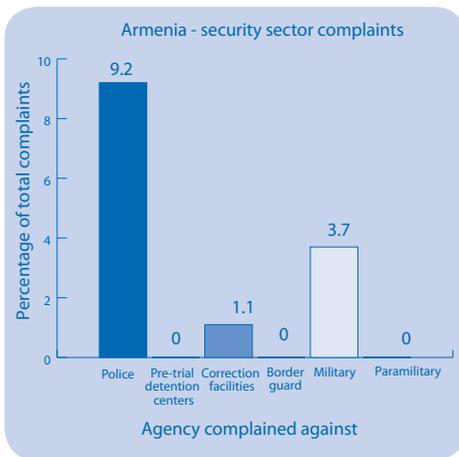
the Russian Federation and Uzbekistan indicated that the police was the agency of the security sector responsible for most cases they received. Two other respondents pointed out that the police was the security sector agency on which they received the second most number of cases. Three respondents, from Moldova, Latvia and Lithuania, indicated that the largest number of cases involving security sector agencies were complaints relating to correction facilities, including prisons. While several *ombudsman* institutions never received complaints from persons held in pre-trial detention centers, Georgia, Moldova, and Russia identified these security sector agencies as the agency about which they received the second most complaints. Most *ombudsman* institutions receive few complaints about human rights violations committed by the military, and even fewer or no complaints about abuses by the border guards or para-military forces.

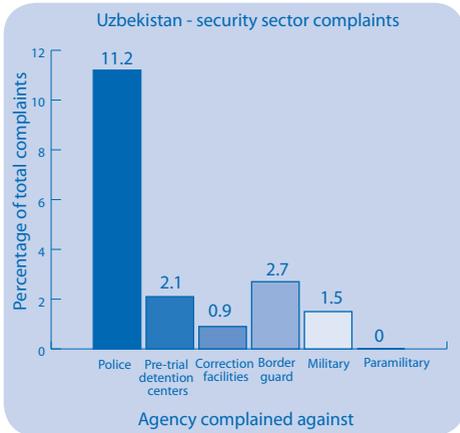
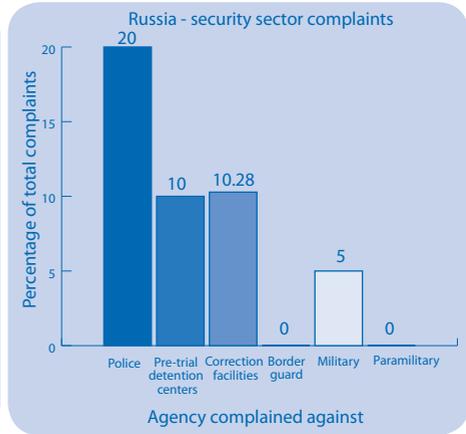
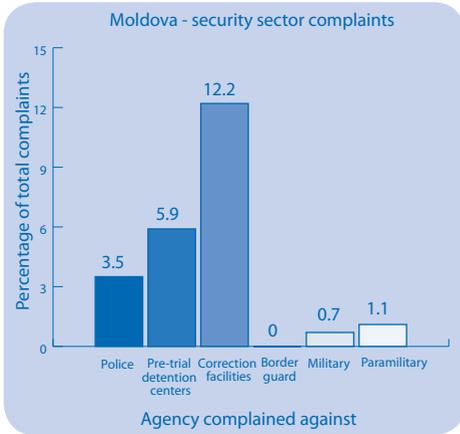
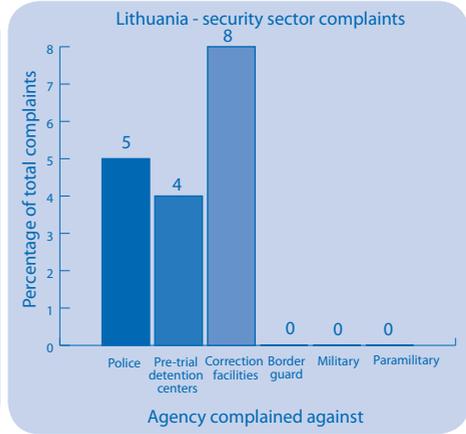
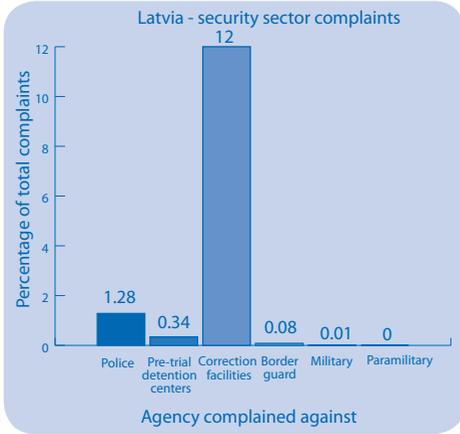
Data presented here does not necessarily reflect the actual number of human rights violations committed by different security sector agencies, since violations committed by some agencies may be underreported for various reasons. The police is the agency of the security sector which interacts with the greatest number of people within society. Therefore, it is understandable that a large number of cases received by the *ombudsman* institutions concern the police. The military and border guards usually only come into contact with a limited group of people, and it seems to be generally difficult for *ombudsman* institutions to oversee the activi-

ties of para-military forces, which might not or not fully be under the control of the government.

The sharp variation in the proportion of cases from custodial institutions has a number of possible explanations. The experience of national human rights institutions that establish effective mechanisms for receiving complaints from prisoners is that these cases come to make up a large proportion of the security sector cases that they handle. The relatively low proportion of complaints from custodial institutions in the countries surveyed is likely to suggest an absence of easy channels for prisoners or detainees to file their complaints.

**Bar charts: security sector agencies responsible for cases dealt with by the ombudsman institution**





In another question, respondents were asked to rank the degree of cooperation between the *ombudsman* institutions and different security sector agencies on a scale from 1-10, with 1 indicating a very low degree and 10 a very high degree of cooperation. Responses to this question are summarized in table 3.

Table 3: Degree of cooperation between the *ombudsman* institutions and security sector agencies

Security Sector Agency	Degree Of Cooperation	
	Degree	Countries
Police	10	Georgia
	9	Lithuania
	8	Azerbaijan, Kazakhstan, Uzbekistan
	6	Latvia
	5	Kyrgyzstan, Russian Federation
	4	Armenia, Moldova
Pre-trial detention centers	Degree	Countries
	10	Georgia
	9	Azerbaijan
	8	Kazakhstan, Lithuania, Russian Federation
	7	Kyrgyzstan, Latvia
	5	Moldova
Correction facilities, including prisons	Degree	Countries
	10	Georgia, Kazakhstan, Lithuania
	9	Azerbaijan, Kyrgyzstan, Russian Federation
	8	Latvia, Moldova
	5	Armenia
Military	Degree	Countries
	8	Azerbaijan, Moldova, Russian Federation
	6	Armenia, Kazakhstan, Uzbekistan
	4	Kyrgyzstan, Latvia
	3	Georgia
	- *	Lithuania
Border guard	Degree	Countries
	7	Armenia, Lithuania
	5	Kazakhstan, Latvia, Uzbekistan
	4	Kyrgyzstan
	2	Azerbaijan, Georgia
	0.5	Kyrgyzstan
	- **	Russian Federation
Para-military forces	Degree	Countries
	4	Uzbekistan
	2	Moldova
	0	Georgia
- ***	Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Russian Federation	

\* The Lithuanian *Ombudsman* Institution has never received complaints about the military.

\*\* The Russian *Ombudsman* Institution does not have authorisation over the border guard.

\*\*\* *Ombudsman* Institutions from these countries do not deal with complaints concerning para-military forces.

From this table it is clear that it is easier for most *ombudsman* institutions to establish cooperative relationships with the police, correction facilities and pre-trial detention centres, whereas building up well-functioning cooperation with the military, border guard and paramilitary forces is more difficult, or that such interaction is non-existent. There are two possible interpretations for these findings. One is that these findings confirm general trends in the level of democratization of various agencies of the security sector in the CIS: the military, an institution that is traditionally characterized by secrecy and seclusion, remains the most resistant to opening itself to public oversight mechanisms such as independent *ombudsman* institutions. Police and correction facilities, on the other hand, are generally more likely to be opened to public scrutiny. Consequently, in countries where there is the political will to actively promote democratization of security sector agencies *ombudsman* institutions are able to establish cooperative relationships with these security sector agencies.

The alternative explanation is that the *ombudsman* institutions ranked highly the degree of cooperation that they enjoyed with the bodies that were most complained against. The level of interaction with the military, border guard and paramilitary bodies correlated with the low number of complaints. The causal relationship is unclear. Was there a low level of cooperation because *ombudsman* institutions did not handle many complaints from these bodies? Or did they receive few complaints because there was a low level of cooperation?

In the last question of section I, *ombudsman* institutions were asked to identify means to increase the cooperation between themselves and security sector agencies. Ranked by frequency, respondents made the following suggestions:

- The organization of roundtables, discussions and regular meetings between security sector agencies and the *ombudsman* institutions. Such meetings can discuss the good practices security sector authorities apply to promote and protect human rights, and good examples for cooperation between the *ombudsman* institution and security sector agencies, as well as problems regarding human rights and the security sector;
- To educate officials from security sector agencies, including high ranking officials, about the (national and international) legal basis of the *ombudsman* institution's work;
- To carry out joint monitoring and joint fact-finding missions on alleged human rights violations (security sector personnel together with staff from *ombudsman* institutions);
- To establish cooperative relationships/ working contacts not only between the central office of the *ombudsman* institution and security sector agencies, but also on lower levels, for example between regional offices of the *ombudsman* institu-

tion and various levels of the command structure of security sector agencies, at regional and local levels. Through these working contacts, a steady flow of information between security sector agencies and the *ombudsman* institution will be secured.

## **b) Section II: Investigations of Complaints about Human Rights Violations by the Security Sector**

The second section was intended to gather more detail about the specific problems that *ombudsman* institutions encounter when they start an investigation on alleged human rights violations committed by security sector agencies; and how they tackle these.

The questionnaire asked about relevant parts of the *ombudsman* institutions' mandates and powers. With the exception of Uzbekistan, all *ombudsman* institutions surveyed have a relatively broad mandate, which allows them to investigate into complaints about human rights violations by various agencies of the security sector. Apart from Uzbekistan, all other *ombudsman* institutions surveyed have access to facilities of the security sector<sup>16</sup> without advance notification. They are authorized to conduct interviews there without security personnel being present, and they have access to all documentation there, including classified information<sup>17</sup> and internal regulations/sub-laws that guide the behavior of security sector personnel.

Despite the fact that most *ombudsman* institutions have relatively broad mandates and corresponding powers, they encounter many problems when they start such investigations. Among others, the following problems were identified:

- Security sector agencies are unwilling to recognize human rights violations committed by them, and are often very reluctant to implement recommendations from the *ombudsman* institution, such as recommendations to start an investigation and/ or to prosecute/ punish officials who are responsible for committing human rights violations;
- Security sector personnel lack understanding of the functions and tasks of the *ombudsman* institution;
- Security sector agencies remain relatively closed institutions that are reluctant to allow civilian oversight;

<sup>16</sup> These include: Pre-trial detention centers, correction facilities (including prisons), military prisons, military pre-trial detention centers (in countries where such facilities exist) and other penitentiary facilities.

<sup>17</sup> Only the Uzbek and Latvian *Ombudsman* Institutions do not have the right to access classified information freely. The Russian ombudsperson has access to classified information, except to documents that determine stages of police investigations.

- In many cases, it is not difficult for security sector agencies to conceal and remove evidence about human rights violations;
- When the *ombudsman* institution asks security sector agencies for an explanation about alleged human rights violations, often only short formal replies are received which do not adequately address the arguments given by the complainant;
- Within many security sector agencies there exist very strong internal networks to protect and assert internal interests, which have substantial influence on the possibility of uncovering human rights violations;
- Security sector officials do not possess satisfactory knowledge of national and international legal norms;
- Despite the fact that most *ombudsman* institutions have the right to enter facilities of the security sector freely, some security sector agencies only allow the ombudsperson himself/ herself to exercise this right. They are reluctant to recognize that the ombudsperson can delegate this right to staff members from the *ombudsman* institution;
- *Ombudsman* institutions face particular difficulties obtaining reliable and objective information about human rights violations affecting officials from the agency itself (e.g. concerning the abuse of conscripts in the military);
- The success of investigations very much depends on the willingness of security sector officials to bring forward the investigations. When there is pressure from high-ranking officials, investigations are often carried out faster and in a more effective way.

Responses to other questions show how *ombudsman* institutions try to counter these problems. The institutions surveyed identified methods of obtaining relevant information in security sector investigations, and their effectiveness has been ranked. The results are summarized in table 4. Where *ombudsman* institutions have the power to visit security sector agencies to conduct interviews without the presence of officials and without advance warning about their visit,<sup>18</sup> this is identified as a very effective way of getting relevant information. Visits to security sector agencies with prior notification are not as widely used as a method of obtaining information, and they are not viewed as very effective by most institutions that use this method. *Ombudsman* institutions ask security sector agencies to provide documents to the investigators less frequently, although this step is identified as being as effective as asking the security sector agencies for explanation by those institutions that apply both methods.

These findings show the utmost importance of *ombudsman* institutions having the necessary powers to conduct inquiries into complaints clearly codified in the law.

<sup>18</sup> In fact, only the Uzbek *Ombudsman* Institution does not have the right to visit security sector agencies without informing them in advance.

Table 4: methods of obtaining information and their effectiveness (figures indicate the number of *ombudsman* institutions out of 10 respondents that chose a particular answer):

Request the security sector agency to provide documents to the investigators					
Frequency	Often	Somewhat often	Usually	Hardly	Never
	1	1	6	2	0
Effectiveness	Very effective	Effective	Somewhat effective	Hardly effective	Very ineffective
	0	6	1	3	0
Request the security sector agency for explanation					
Frequency	Often	Somewhat often	Usually	Hardly	Never
	5	0	5	0	0
Effectiveness	Very effective	Effective	Somewhat effective	Hardly effective	Very ineffective
	1	4	5	0	0
Visit the security sector agency after informing them about the purpose of the planned visit, conducting hearings without the presence of administration and visiting premises in person					
Frequency	Often	Somewhat often	Usually	Hardly	Never
	3	0	2	3	2
Effectiveness	Very effective	Effective	Somewhat effective	Hardly effective	Very ineffective
	2	4	0	2	0
Visiting the security sector agency without informing them in advance, conducting hearings without the presence of administration and visiting premises in person					
Frequency	Often	Somewhat often	Usually	Hardly	Never
	7	0	1	1	1
Effectiveness	Very effective	Effective	Somewhat effective	Hardly effective	Very ineffective
	6	2	0	1	0

The Georgian *Ombudsman* Institution in particular stressed that visiting security sector agencies without informing them in advance is the most effective method of obtaining information. In addition, the Georgian institution established a system for the regular monitoring of police stations throughout the country, which it claimed contributed to an immense drop in incidents of torture in police stations and pre-trial cells since December 2004.<sup>19</sup>

For the *ombudsman* institution to carry out its supervisory mandate effectively, it is not only important to investigate human rights violations committed by secu-

<sup>19</sup> See the 2004 annual report of the Georgian *Ombudsman* Institution, p. 19, available at: <http://www.ombudsman.ge/download/annrep04E.pdf>; and the recent report by the Office of the Public Defender (*Ombudsman*) of Georgia on: Review of situation of Human Rights in Georgia and Development of Human Rights Protection Institutions, (on file with UNDP Bratislava).

rity sector agencies, but also to report on the results of investigations and on the general human rights situation within the security sector to relevant governmental institutions, the media, civil society, and the general public. Based on these reports, relevant authorities can take measures to tackle human rights problems in the security sector, and civil society organizations (CSOs) can press the government to reform the security sector. Therefore, the questionnaire included one question that was intended to find out more about the interaction between the *ombudsman* institutions, other governmental institutions, the media, and CSOs regarding security sector oversight. Overall, the responses received to this question reveal that the *ombudsman* institutions most regularly report to parliaments or parliamentary committees, and that the parliaments are most active in reacting to the *ombudsman* institutions' reports. Given that all institutions surveyed are answerable to parliament, this is not surprising. Many *ombudsman* institutions report to the president and specific ministries as well, but these governmental organs do not always react effectively.

Most *ombudsman* institutions reported to have very good relationships with the media. Often, when *ombudsman* institutions did not achieve the expected results via reporting to the parliament, they forwarded relevant information to the media, which published it. Some *ombudsman* institutions have their own regular broadcast time on radio/TV.

There appears to be a low level of interaction between the *ombudsman* institutions and CSOs, since only few examples of these actors' reactions to the *ombudsman* institutions' reports have been given. However, several *ombudsman* institutions indicated that they plan to strengthen their relationship with CSOs in the future. Generally, interaction between the *ombudsman* institution and CSOs seems to have reached a higher level in the Baltic States and in Georgia than in other countries of the former Soviet Union. Further details of the responses are summarized in table 5.

All *ombudsman* institutions indicated that security sector agencies introduced internal disciplinary measures based on the recommendations that were given by the *ombudsman* institution. Officials from various security sector agencies (the police, members of staff from pre-trial detention centers, correctional facilities and the office of the public prosecutor) have been reprimanded, demoted, dismissed, or have had criminal proceedings introduced against them when they have been involved in committing human rights violations. Many *ombudsman* institutions pointed out, however, that the implementation of their recommendations very much depend on the willingness of high ranking officials from the concerned agency. In addition, the Moldovan *ombudsman* institution noted that recommendations requiring spending, such as the improvement of prison conditions, are rarely followed. Here, *ombudsman* institutions need to find ways of convincing governments of the

Table 5: Reporting by *ombudsman* institutions

Institution	Report upon request/ own initiative	Reactions to the <i>ombudsman</i> institutions' reports <sup>20</sup>
Parliament: all <i>ombudsman</i> institutions reported to the parliament; some reported to the parliament's human rights committee, to the security committee, or to single parliamentarians.	All <i>ombudsman</i> institutions reported upon their own initiative.	<ul style="list-style-type: none"> <li>• General discussion of the <i>ombudsman</i>'s reports;</li> <li>• Setting up of working groups with the mandate to improve existing legislation and develop new legislation concerning the security sector, based on the ombudsperson's recommendations;</li> <li>• Parliament adopts changes to legislation recommended by the <i>ombudsman</i> institution;</li> <li>• The <i>ombudsman</i> institution's reports are used by the parliament to initiate new legislation, during parliament's question time of the government, and during meetings of the parliament with individual ministers;</li> <li>• However: one <i>ombudsman</i> institution reported that sometimes the expected reactions fail to appear.</li> </ul>
President: six <i>ombudsman</i> institutions reported to the President; three never did.	Four institutions reported upon their own initiative; one reported upon request; one reported both upon its own initiative and upon request.	<ul style="list-style-type: none"> <li>• Generally, few <i>ombudsman</i> institutions reported on reaction from the President;</li> <li>• One <i>ombudsman</i> institution reported that there were several instances where the President gave instructions to the government or to specific ministries to implement the recommendations given by the <i>ombudsman</i> institution;</li> <li>• One <i>ombudsman</i> institution supposed that its reports do not reach the President personally, but are forwarded to relevant ministries by the President's administration.</li> </ul>
Specific ministries: all <i>ombudsman</i> institutions reported to the specific ministries, mostly Defence, Interior and Justice.	All <i>ombudsman</i> institutions reported upon their own initiative.	<ul style="list-style-type: none"> <li>• Following the <i>ombudsman</i> institutions' recommendations, ministries prompted the reprimand, demotion or dismissal of officials involved in human rights violations;</li> <li>• Ministries press for changes in legislation based on the <i>ombudsman</i> institutions' recommendations;</li> <li>• Ministries regularly examine the reports and recommendations of the <i>ombudsman</i> institution and report back to the <i>ombudsman</i> institutions about the implementation of the recommendations;</li> <li>• However: several <i>ombudsman</i> institutions reported that the ministries fail to take adequate actions when they receive <i>ombudsman</i> institution's reports about human rights violations committed by security sector agencies.</li> </ul>
Media: all <i>ombudsman</i> institutions reported to the media.	All institutions reported upon their own initiative. In addition, some reported upon request.	<ul style="list-style-type: none"> <li>• Generally, few reactions from the media were reported by the <i>ombudsman</i> institutions;</li> <li>• The <i>ombudsman</i> institutions' reports were printed in newspapers or made public on the Internet.</li> </ul>
To the public (including to CSOs): eight <i>ombudsman</i> institutions reported to the public (CSOs); two never did.	Five <i>ombudsman</i> institutions reported upon their own initiative, whereas two reported upon request.	<ul style="list-style-type: none"> <li>• CSOs inform the general public about the activities of the <i>ombudsman</i> institution and outcomes of investigations into human rights violations committed by security sector agencies;</li> <li>• Several <i>ombudsman</i> institutions indicated that there was an institutionalized interaction between the <i>ombudsman</i> institution and CSOs, which allows for the exchange of information between the <i>ombudsman</i> institutions and CSOs on a regular basis;</li> <li>• One <i>ombudsman</i> institution reported that CSOs discuss the <i>ombudsman</i> institution's reports among themselves and sometimes present proposals for legislation change to the <i>ombudsman</i> institutions. The <i>ombudsman</i> institutions pass these suggestions onto the relevant governmental agencies.</li> </ul>

<sup>20</sup> This section summarises the most common responses that were given by the *ombudsman* institutions, ranked by frequency.

necessity of such investments in order to combat persistent violations of human rights in correctional facilities.

### c) Section III: Preventive Measures

In the last section of the questionnaire, *ombudsman* institutions were asked to elaborate on their activities that contribute to the prevention of human rights violations by security sector agencies. The section touched upon *ombudsman* institutions' role in discussing, designing and implementing security sector reform; their involvement in drafting, commenting, and changing legislation concerning security sector agencies; as well as training and other educational activities on human rights for staff from security sector agencies.

Respondents were asked to define the role of their *ombudsman* institutions in preventing human rights violations by security sector agencies. In the first place, most institutions named building a country-wide legal culture by educating the general public about their rights and the mechanisms for the protection of these rights, including about the role and function of *ombudsman* institutions, and the education of security sector officials about their duties and obligations. Others added that the broadening and strengthening of the *ombudsman* institutions' activities (carrying out regular monitoring of security sector agencies and the effective examination of complaints) would be the best method to prevent human rights violations. These responses are consistent with answers to a question in which respondents were asked to identify the most important issues that bring about human rights violations by security sector agencies. Issues identified were:

- the unwillingness of officials to fulfill relevant legal norms;
- officials' lack of knowledge or ignorance about the law;
- the fact that many human rights violations committed by security sector officials remain unpunished;
- the detention of individuals for a period of time longer than allowed by law;
- the absence of a clear legal basis for regulating the activities of governmental interior organs;
- low wages.

Most *ombudsman* institutions (the Kyrgyz and Moldovan *Ombudsman* Institutions being the exceptions) have been involved in discussing, designing or implementing security sector reform. For example:

- The Armenian *Ombudsman* Institution was heavily involved in elaborating a law on the police;
- The Georgian *Ombudsman* Institution has been one of the leading governmental institutions that developed a strategy to reform the Georgian Criminal Code;

- The Kazakh *Ombudsman* Institution actively took part in developing a long-term penitentiary policy for the Republic of Kazakhstan until 2015;
- The Lithuanian *Ombudsman* Institution was involved in designing and setting up a juvenile justice system;
- The Uzbek *Ombudsman* Institution has taken part in the work of a parliamentary working group with the mandate to develop legislation regulating the activities of the states' internal organs, including the secret service.

However, responses revealed that international donors who provide funding or carry out projects in the security sector rarely involve *ombudsman* institutions.

*Ombudsman* institutions are also involved in prevention through activities to bring national legislation into conformity with international human rights norms. Although most *ombudsman* institutions do not have the power to initiate legislative processes,<sup>21</sup> they can recommend legislation to the parliament and have the right to comment on bills and to recommend changes to existing legislation. All *ombudsman* institutions indicated that they make active use of these powers, including on security sector issues. For instance:

- The Armenian *Ombudsman* Institution submitted its comments on issues of court administration in the area of criminal law;
- The Azerbaijani *Ombudsman* Institution commented on criminal and criminal-procedural legislation, legislation regulating the state of emergency, and recommended Azerbaijan's accession to the UN Convention against Discrimination in Education and to Protocol 12 and 14 to the European Convention on Human Rights;
- The Georgian *Ombudsman* Institution submitted comments on prison rules to the Ministry of Justice;
- The Kazakh *Ombudsman* Institution gave comments on a bill from the Ministry of the Interior concerning special measures for the maintenance of public order in situations of emergency;
- The Latvian *Ombudsman* Institution commented on draft laws regarding imprisonment and criminal-procedural legislation;
- Comments given by the Lithuanian *Ombudsman* Institution brought the Lithuanian criminal code in conformity with the UN Convention on the Rights of the Child;
- The Moldovan *Ombudsman* Institution recommended the adoption of an additional article in the criminal code providing for the criminalization of acts of torture;

<sup>21</sup> The Georgian and Lithuanian *Ombudsman* Institutions being the exceptions.

- The Russian *Ombudsman* Institution was involved in the elaboration of a law on the protection of victims and witnesses.

According to the respondents, the majority of the *ombudsman* institutions' recommendations and comments are adopted by the parliaments.

A further important method of bringing national legislation concerning security issues into conformity with international human rights law is the *ombudsman* institutions' powers to turn to the constitutional court when it discovers inconsistencies. All three Caucasian *ombudsman* institutions, and the Latvian, Moldovan and Russian *Ombudsman* Institutions have the right to refer matters to the constitutional court. Moreover, the Lithuanian parliament is currently considering widening the Lithuanian *Ombudsman* Institution's competencies to give it this power. Almost all *ombudsman* institutions that have this right<sup>22</sup> made use of it successfully and many institutions plan to use it again in the future. Only the three *ombudsman* institutions from Central Asia (Kazakhstan, Kyrgyzstan and Uzbekistan) do not have these powers.

Another way in which *ombudsman* institutions usually try to prevent security sector agencies from committing human rights violations is to provide training on national and international human rights norms, which should guide the activities of security sector agencies. Seven *ombudsman* institutions already conducted such training, while three others never did. The Armenian *Ombudsman* Institution, which was only established in October 2003,<sup>23</sup> plans to conduct such training as well. All *ombudsman* institutions that are engaged in training activities primarily trained police and staff of correctional facilities. Mostly, the training was conducted for officials working on the mid-management level, but the Azerbaijani and Uzbek *Ombudsman* Institutions also delivered training to both low-level officials and those in leading positions. The Azerbaijani, Lithuanian and Russian *Ombudsman* Institutions also trained staff of pre-trial detention centers and the Azerbaijani, Moldovan and Russian *Ombudsman* Institutions trained members of the military. No *ombudsman* institution provided training to the border guard.

*Ombudsman* institutions that had been involved in conducting training for security sector officials reported that this was generally perceived positively, and that many participants expressed their interest in holding training sessions on a regular basis. Moreover, several participants suggested training a greater number of officials, and inviting CSOs and international experts to participate.

<sup>22</sup> Only the Russian *Ombudsman* Institution did not yet make use of its right to turn to the constitutional court.

<sup>23</sup> See: website of the Human Rights Defender of the Republic of Armenia, available at: <http://www.ombuds.am/main/en/1/81/>.

In addition, seven *ombudsman* institutions developed other educational materials on human rights. For example, the Georgian *Ombudsman* Institution put up notices on the rights of people held against their will in all police stations and other places where people are remanded in custody. The Moldovan *Ombudsman* Institution handed out brochures and teaching materials on human rights to security sector officials. The Kazakh *Ombudsman* Institution set up a digital human rights library that allows people to find free legal information on the most relevant human rights questions.<sup>24</sup> Several *ombudsman* institutions hold regular meetings with various security sector agencies, including the staff of secret services.

## 4. Conclusion

From the summarized results of the survey it is clear that *ombudsman* institutions in the former Soviet Union face great challenges investigating complaints against security sector agencies, and in their other work with these agencies which remain characterized by isolation and secrecy.

The responses received to the questionnaire survey analyzed in this article revealed that in all CIS and Baltic states which participated in the survey there exists a certain level of interaction between security sector agencies and the *ombudsman* institutions. All *ombudsman* institutions in the region are to a lesser or greater extent involved in the following activities:

- Independent investigation of complaints about human rights violations committed by security sector agencies;
- Monitoring the security sector;
- Developing legislation related to security sector agencies in conformity with international human rights standards;
- Training officials from the security sector.

However, responses from the various *ombudsman* institutions also showed that the *ombudsman* institutions' effectiveness in overseeing security sector agencies very much depends on the legislative basis for their activities. If the institutions do not have all necessary powers, their oversight function will be compromised, and their contribution to making security sector agencies more accountable will be less. If *ombudsman* institutions have all necessary powers, in situations where a state actively promotes systematic reform of the security sector, *ombudsman* institutions will be most likely to contribute effectively to this reform process and to further the democratization of the security sector. This is especially true for states in transition, in which

<sup>24</sup> The library can be accessed at: <http://www.hrc.nabrk.kz/>.

the judicial system might be weak, or where certain issues might not be justiciable. On the other hand, unwillingness to advance systematic reform of the security sector always inhibits *ombudsman* institutions' ability to fulfill their mandate of effectively protecting peoples' human rights.

# **Backgrounder: Military Ombudsman**

*DCAF Security Sector Reform Working Group*

## Prefix

The DCAF Backgrounder on the Military *Ombudsman* is included in this publication to provide information on a specialized form of *ombudsman* institution developed exclusively for the military. The purpose is not to recommend the establishment of such specialized offices. Instead, the purpose is rather to provide transition countries with information on the ways in which select established democracies have attempted to protect human rights in the military sphere, and to disseminate the lessons that can be drawn from the set-up and experience of military *ombudsman* offices.

The DCAF Backgrounder Series is prepared by the Centre's Security Sector Reform Working Group, in conjunction with DCAF fellows and outside experts. This and other backgrounders are available at [www.dcaf.ch/publications/backgrounders.cfm](http://www.dcaf.ch/publications/backgrounders.cfm).

## What is a Military *Ombudsman*?<sup>1</sup>

For the purpose of this paper, a military *ombudsman* (MO) is a mechanism independent of the military command structure that exercises oversight of the defence sector and helps to ensure that it observes the principles and practice of good governance. The MO addresses complaints about improper and abusive behaviour in the military as well as shortcomings in military procedures, and formulates recommendations for corrective action. The MO does not make defence policy or decisions on operational issues. While the immediate purpose of the MO is to redress grievances and to encourage proper conduct of and within the defence sector, the broader role of the office is to enhance its efficiency and effectiveness by making it accountable and responsive to its constituencies.

## Why is the institution important?

The MO helps to:

- exercise democratic control over the defence sector
- ensure respect for the rule of law in the armed forces
- promote transparency and accountability in defence structures
- focus attention on problems in military practice requiring corrective action
- enhance the efficiency and effectiveness of the defence sector
- strengthen the confidence of both the public and defence sector personnel in the military.

<sup>1</sup> The views expressed in this backgrounder are those of the author and do not necessarily represent those of the United Nations or UNDP.

## How to ensure the full potential of the institution?

For an MO office to realise its full potential, there are three key requirements: operational independence, political authority, and an adequate material/intellectual infrastructure. Ideally, the office of the MO should:

- be legally defined in the constitution or an act of the legislature
- have its own investigative capacity, and be authorized to freely initiate investigations on questions affecting individuals or, as appropriate, of a systemic nature
- have access to the information necessary to conduct any investigation
- be able to operate in the utmost confidentiality
- be able to publish reports for the attention of parliament and the general public.
- be empowered to formulate recommendations for consideration by the civil and military leadership, which require official and public responses
- be housed in its own premises, independently of the General Staff.

Of crucial importance is the staff of the office of the MO. Ideally, this should be made up of civilians whose expertise should allow for the MO office to carry out research, formulate legal opinions and develop media policy independently of other departments of government. To avoid problems in accessing classified information, the staff should also be cleared to the highest security level.

## How do the German and Canadian oversight mechanisms work?

The German *Ombudsman*, known as the Wehrbeauftragter des Bundestages (WB), or Parliamentary Commissioner of the Armed Forces, and the Canadian Military *Ombudsman* are among the most profiled mechanisms for military oversight. They have often been used as models by other countries, for example, the Irish Military *Ombudsman* and the Czech Republic Armed Forces *Ombudsman*.

The WB office was established in 1959 after the decision was taken to recreate German armed forces. The office is based on the Swedish Militieombudman, the first structure of its kind, which was established in 1915. The office of the Canadian Military *Ombudsman* was set up in 1998 following the investigation into the Somalia affair.

Both offices have approximately 50 staff members. The German WB received 6154 complaints in 2004 for 260,000 members of the Bundeswehr (German Armed Forces). During the same period, the Canadian MO received 2274 complaints for the 60,000 members of the Canadian Forces (CF) and the 20,000 civilians employed by the Canadian Department of National Defence (DND). The annual budget of the German WB in 2004 was around €3,370,000. That of the Canadian MO for the 2003-2004 fiscal year was roughly similar at CAN \$5 million.

Table 1 highlights the main features of the two approaches.

Table 1 — A Comparison of the Canadian and German Systems

Canada Military Ombudsman (MO)	KEY ISSUES	Germany's Wehrbeauftragter (WB)
<ul style="list-style-type: none"> <li>• negotiated mandate but no legal statute</li> </ul>	What is the legal status of the Office?	<ul style="list-style-type: none"> <li>• article 45b of the constitution</li> <li>• law on the Wehrbeauftragter des Bundestages</li> </ul>
<ul style="list-style-type: none"> <li>• by the Defence Minister (DM) for a 5-year term (renewable)</li> </ul>	By Whom is the MO/WB appointed?	<ul style="list-style-type: none"> <li>• by a majority vote of the Bundestag in secret ballot for a 5-year term (renewable)</li> </ul>
<ul style="list-style-type: none"> <li>• current and former members of the CF and DND, and family members</li> <li>• the DM, the military chain of command, a member of parliament</li> <li>• the MO, with notice to the DM</li> </ul>	Who can initiate a complaint or trigger an investigation?	<ul style="list-style-type: none"> <li>• members of the Bundeswehr (Armed Forces) and their family members</li> <li>• the Bundestag, its Defence Committee</li> <li>• the WB at his discretion</li> </ul>
<ul style="list-style-type: none"> <li>• any individual complaint within the purview of the CF and DND</li> <li>• systemic issues</li> </ul>	What kind of cases can the MO/WB address ?	<ul style="list-style-type: none"> <li>• any individual complaint or petition made by Bundeswehr personnel</li> </ul>
<ul style="list-style-type: none"> <li>• the complainant must have attempted to resolve the complaint by referring it to the chain of command or the military grievance system</li> <li>• the MO can refuse a complaint if it is untimely or frivolous or if it would require an injudicious use of resources.</li> <li>• the MO can accept a complaint directly in compelling circumstances</li> </ul>	What preconditions must be fulfilled before the MO/WB can accept a case?	<ul style="list-style-type: none"> <li>• the members of the Bundeswehr have the right to contact the WB directly without going through other bodies of the military grievance system</li> </ul>
<ul style="list-style-type: none"> <li>• to the DM</li> </ul>	To whom does the MO/WB report?	<ul style="list-style-type: none"> <li>• to the Bundestag</li> </ul>
<ul style="list-style-type: none"> <li>• the MO makes recommendations and can follow-up his recommendations with the relevant bodies with a view to monitoring implementation.</li> </ul>	What is the nature of the MO/WB rulings?	<ul style="list-style-type: none"> <li>• the WB makes recommendations and can follow-up his recommendations with the relevant bodies with a view to monitoring implementation</li> </ul>
<ul style="list-style-type: none"> <li>• the MO publishes an Annual Report which is tabled in Parliament by the Defence Minister and debated by the relevant parliamentary committees</li> <li>• the MO also publishes Special Reports on specific investigations, when he judges this to be in the public interest</li> </ul>	What other sources of influence does the Office have?	<ul style="list-style-type: none"> <li>• the WB publishes an Annual Report, which is submitted to the President of the Bundestag; the President refers the report to the Defence Committee, which requests the DM to comment on it</li> <li>• the WB can request reports on discipline in the Bundeswehr and attend criminal or disciplinary proceedings in court as an observer.</li> </ul>
<ul style="list-style-type: none"> <li>• the MO can access all documents that he needs to carry out his function (in some cases the MO may be denied access for security considerations or operational requirements)</li> </ul>	What about classified information?	<ul style="list-style-type: none"> <li>• the WB can demand access to information and records from the DM</li> </ul>

## What about other approaches?

In addition to the Canadian and German **independent military oversight mechanisms**, described above, there are essentially two other organizational approaches: **integrated military oversight mechanisms**, or mechanisms that are part of the military hierarchy, and **civilian oversight mechanisms**, such as a Parliamentary *Ombudsman* or a Human Rights *Ombudsman* whose mandates include military and defence matters. Each of these approaches has its strong and weak points.

The military leadership and the executive tend to favour the **integrated military oversight mechanism** as it appears to be more receptive to command and control issues and attentive to the need to protect the operational effectiveness of the military. The Inspector-General, as this mechanism is most often called, is usually involved in operational issues, and the incumbent is invariably a serving member of the military. The main drawback of this approach is that here the military performs the oversight function on itself. This can create potential for conflict of interest and undermine confidence in the recommendations of the oversight body. This approach tends to be the norm in both democratic and democratizing countries.

Systems where the military oversight function is part of a **civilian oversight mechanism** have the advantage of ensuring that soldiers' rights are not unduly differentiated from those of the population as a whole. The concentration of the *ombudsman* function in one office can also be less costly than having several specialized offices. At the same time, a civilian oversight mechanism may lack the necessary expertise for dealing with the defence sector and may fail to focus attention on the particular problems facing military personnel. Examples of this model are Ukraine, Portugal, Lithuania, and Sweden.

The **independent military oversight mechanism** has the advantage of being able to devote its attention to military matters and of being to operate at arm's length from those it is mandated to oversee. Its ability to issue public reports strengthens Parliament's oversight capacity and ensures greater transparency and accountability of the military. While the mechanism may spark reservations in the military hierarchy and the civilian defence management structure, if it is truly independent, impartial, fair and effective in its recommendations, it can come to enjoy their confidence and support.

The approaches described above are not to be confused with ombudsmen that assists a client in developing, and then pursuing, his or her options for resolving problems. Mechanisms of this type have proliferated in recent years in the corporate and educational sectors, and in social organizations. This approach is not typical of the defence sector.

As a final point on the different approaches in play - little or no oversight or accountability of the military is characteristic of authoritarian and failed states.

## Open questions

One question that arises in a security world where it has become increasingly important for the gamut of security sector actors to be able to work together is whether the

MO should not become an *ombudsman* overseeing all security sector actors. In any case, there is a decided need for enhanced oversight of security sector actors other than the military. Here the oversight function tends to be even more underdeveloped than in the defence sector.

- Increasingly, the military and other security sector actors find themselves engaged in theatres well beyond their country's national borders and traditional areas of deployment. This development has important implications for the oversight function.
- There is a small but increasing number of countries that have an MO. They should consider meeting on a multilateral basis for exchanges of mutual concern and with a view to developing interest in the institution.
- A host of regional and international institutions have direct or indirect responsibilities in the area of oversight. They should be encouraged to consider regional and general approaches to oversight, including the possibility of developing a code of conduct for oversight.

## Further Information

Fluri, P., Johnsson, A. (eds.) Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices, Handbook for Parliamentarians no. 5. IPU/DCAF: Geneva, 2003, pp.90-93. [http://www.dcaf.ch/oversight/proj\\_english.cfm?navsub1=12&navsub2=3&nav1=3](http://www.dcaf.ch/oversight/proj_english.cfm?navsub1=12&navsub2=3&nav1=3)

Gleumes, Karl. The Parliamentary Commissioner for the Armed Forces. His Role in Exercising Parliamentary Control over the Federal Armed Forces and Processing Petitions From Service Personnel. Berlin, German Bundestag, 2001.

Marin, Andre. The Way Forward - Action Plan for the Office of the Ombudsman. Report to the Minister of National Defence of Canada. Ottawa, 1999.

## Other Information

**International Ombudsman Institute (IOI)** : [www.law.ualberta.ca/centres/ioi/](http://www.law.ualberta.ca/centres/ioi/)

**Association des Ombudsmans et Médiateurs de la Francophonie (AOMF)**: <http://www.mediateur-republique.fr/page.php?cible=citoyen&lg=fr&rub=07&srub=01&ssrub=01&sssrub=30>

**The Ombudsman Association (TOA)**: [web.mit.edu/negotiation/toa/](http://web.mit.edu/negotiation/toa/)

## The Military Ombudsman on the Web

**Australia**: [www.comb.gov.au](http://www.comb.gov.au)

**Canada**: [www.ombudsman.forces.gc.ca](http://www.ombudsman.forces.gc.ca)

**Germany**: [www.bundestag.de/htdocs\\_e/orga/03organs/06armforce.html](http://www.bundestag.de/htdocs_e/orga/03organs/06armforce.html)

**Netherlands**: [www.mindef.nl/ministerie/igk/english/index.html](http://www.mindef.nl/ministerie/igk/english/index.html)

# Improving Democratic Oversight of the Security Sector: Recommendations to *Ombudsman* Institutions

UNDP/DCAF

## Introduction

These recommendations are primarily intended to guide *ombudsman* institutions to improve their functions in the security sector, together with appropriate support and coordinated efforts from parliamentarians, civil society and international organizations.

The recommendations are based on human rights principles and good practice in the security sector by *ombudsman* institutions worldwide. They provide the foundation for a comprehensive approach to providing appropriate legislative measures for *ombudsman* institutions, methods to receive, examine complaints, issue investigative, annual and special reports, educate, and seek international cooperation and participation in security sector oversight.

The security sector includes all state services and agencies that have the legitimate authority to use force, order

the use of force or threaten to use force. Normally, the security sector agencies include the military, paramilitary units (like military police), police, border guard and other law-enforcement services.<sup>1</sup> Democratic oversight is concerned with transparency and accountability, as well as with the rights both of those who work within the security sector, such as individual soldiers, and of the general public in their relations with security agencies.

Democratic oversight of the security sector implies a concept of security that emphasizes comprehensive human security, rather than “state security”. Security institutions are custodians of the security of all members of society.

The following concrete measures are recommended to ensure that an *ombudsman* institution plays an effective role in democratic oversight of the security sector.

## Legislation on *Ombudsman* Institutions

**1** Ensure that national legislation creating *ombudsman* institutions provides the powers necessary for the institution to function according to international norms. Advocate where necessary for amendments to national legislation to add missing powers needed to work with security sector institutions.

To function effectively, *ombudsman* institutions need a proper legislative basis

for their activities. This should include powers to access places of detention and closed institutions, documents (whether they are classified, secret or confidential), and not be suspended so they may continue to function effectively during any state of emergency. The “Paris Principles”, adopted by the UN Commission on Human Rights in 1992, state that a national human rights institution shall “hear

<sup>1</sup> This definition is derived from the ‘Glossary’ of DCAF Document No.4, available at: [http://dcaf.ch/docs/dcaf\\_doc4.pdf](http://dcaf.ch/docs/dcaf_doc4.pdf)

any person and obtain any information and any documents falling within its competence."<sup>2</sup> The Optional Protocol to the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment envisages the creation of national preventive mechanisms, usually pre-existing national human rights institutions, which will have full powers to inspect places of detention and have private interviews with persons deprived of their liberty.<sup>3</sup>

The principle underlying these provisions is that an *ombudsman* institution must have all the necessary powers to be accessible to receive complaints, examine or investigate them impartially, make findings on the complaints and provide recommendations based on the findings.<sup>4</sup> They also need to be able to inquire into relevant issues on their own initiative (*suo motu*).

**2 Harmonize national legislation governing security sector institutions with legislation creating the *ombudsman* institution to ensure that security sector institutions recognize, observe and facilitate use of the *ombudsman* institution's powers.**

While laws creating *ombudsman* institutions are often passed after other national

legislation in the security sector, conflicts between these laws and the law creating an *ombudsman* institution impede the institution from fulfilling its mandate or ensuring that its powers are honored. In the CIS, the law creating *ombudsman* institutions frequently refers to non-existent legislation, which is especially problematic when it comes to issues of effective cooperation between the *ombudsman* institution and security sector agencies, and the implementation of the *ombudsman* institution's recommendations.

These conflicts have been resolved in a number of countries by harmonizing legislation on security sector institutions with that of the *ombudsman* institution, or by introducing new legislation to ensure cooperation between security sector agencies and the *ombudsman* institution.

*Ombudsman* institutions should audit security sector legislation to determine if it needs amending to bring it into harmony with laws creating the *ombudsman* institution. A list of inconsistencies and conflicts can then form the basis for suggested amendments to security sector legislation that would strengthen the *ombudsman* institution's ability to use its legal powers and fulfill its mandate.

<sup>2</sup> Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (The Paris Principles), principle C2; UN Doc A/RES/48/134 (20 Dec 1993), available at: <http://www.ohchr.org/english/law/parisprinciples.htm>

<sup>3</sup> See Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, articles 17-23; adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199; available at: <http://www.ohchr.org/english/law/pdf/cat-one.pdf>

<sup>4</sup> In a 2005 report by the International Council on Human Rights Policy, endorsed by the UN High Commissioner for Human Rights, a series of "benchmarks" are developed for the implementation of the Paris Principles. These include the legal authority to compel the appearance of witnesses and access to premises. *Assessing the Effectiveness of National Human Rights Institutions*, Versoix, 2005, p. 21.

### 3 Give *ombudsman* institutions power to inquire into alleged violations of human rights and maladministration.

Laws creating *ombudsman* institutions determine what matters are appropriate subjects for complaints and inquiries. At a minimum for its work in the security sector the institution needs the authority to address alleged violations of human rights. However, some matters that impede transparency and accountability in the security sector may not be violations of human rights. Adding maladministration to the *ombudsman* institution's mandate helps it address additional matters, such as corruption that can lead to unfair treatment and discrimination.

### 4 Provide that *ombudsman* institutions may refer to international human rights treaties as persuasive authorities, including during states of emergency and especially in countries where international human rights treaties are not directly applicable within the domestic legal order.

After *ombudsman* institutions find out the facts about events alleged in complaints, they analyze those facts in light of the laws that govern them. The institutions need to refer to international treaties as persuasive authorities when those treaties are not directly applicable or when national legisla-

tion provides no other authority governing the facts that have been found.

International law allows circumstances in which certain human rights may be derogated from, as in the event of a declared state of emergency threatening the life of the nation. Other rights may contain inherent and explicit limitations, for example on grounds of national security. The circumstances in which rights may be derogated from or limited are defined precisely in the texts of international human rights instruments, as well as in the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights<sup>5</sup>, and the General Comment No.19 to the ICCPR, issued by the UN Human Rights Committee.<sup>6</sup>

No justification exists in international human rights standards for preventing oversight by *ombudsman* institutions on national security grounds when derogations of protected rights are in force. *Ombudsman* institutions should examine attempts at derogations to determine whether they conform to the prescribed procedures and preconditions. When the security sector purports to limit rights on national security grounds, the *ombudsman* may exercise its oversight role to determine whether the thresholds that are the necessary preconditions for such limitations have been met.<sup>7</sup>

<sup>5</sup> United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1985/4 (1985), available at: <http://www1.umn.edu/humanrts/instreet/siracusaprinciples.html>

<sup>6</sup> UN Human Rights Committee: General Comment No.19, States of Emergency (Art.4 ICCPR), UN Doc. CCPR/C/21/Rev.1/Add.1, 31 August 2001, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/71eba4be3974b4f7c1256ae200517361?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/71eba4be3974b4f7c1256ae200517361?Opendocument)

<sup>7</sup> *Ibid.*

## **5 Ensure that national legislation provides for regional offices of the *ombudsman* institution and their physical accessibility.**

An *ombudsman* institution's regional and local presence facilitates easy access for individuals to make inquiries, applications and complaints about security sector institutions. Importantly, *ombudsman* institutions should make sure that their offices are physically accessible.<sup>8</sup> Where legitimate budgetary constraints make it impossible to open full offices, some institutions have explored other options such as licensing local representatives to collect complaints on its behalf – here it is essential to weigh the advantages of such an approach carefully against the risk of compromising confidentiality.

## **6 Advocate for sufficient budgetary resources for *ombudsman* institutions so that *ombudsman* institutions can perform all the functions set out in their mandate.**

The investigations of *ombudsman* institutions are often complex and costly, specifically in the security sector, and require the input and cooperation of many experts. For example, the German and the Canadian military *ombudsman* institutions that are responsible for investigating complaints from members of the military only have around 50 staff members. The German military *ombudsman* has an annual budget of around €3,370,000; the annual budget of the Ca-

nadian military *ombudsman* institution is similar with CAN \$5 million.<sup>9</sup>

In many CIS countries, however, *ombudsman* institutions are frequently ineffective because they lack adequate funding. Therefore, *ombudsman* institutions need to take constant efforts to ensure that they receive adequate funds from the national budget that allow them to effectively perform their mandate.

## **7 Seek statutory basis for *ombudsman* institution to communicate and interact substantively with all parliamentary committees, especially those with jurisdiction over the security sector including the human rights, security, law enforcement, legislation/legal reform, and budget committees. Also, seek statutory basis for the *ombudsman* institution to initiate parliamentary investigations.**

*Ombudsman* institutions need to interact with parliamentary committees to present their recommendations regarding the security sector. The basis for this communication and interaction should be set forth in national legislation. For the redress of gross human rights violations, it is highly desirable for the *ombudsman* institution to have the right to initiate investigations by parliament of such violations.

## **8 Communicate with international human rights monitoring bodies to comment on or further elaborate on the country's periodic reports.**

<sup>8</sup> Cp.: Recommendation #18.

<sup>9</sup> For more information on military *ombudsman* institutions see DCAF's backgounder on pages 36-41 of this publication.

Because *ombudsman* institutions are mandated to receive and examine complaints about alleged violations of human rights and impartially investigate them and make recommendations, they are uniquely situated to comment on the human rights situations in their countries to international human rights monitoring bodies.

Because they are independent institutions, their role in the country's periodic reports to these bodies is best undertaken through comments directly to the bodies or through further elaboration rather than direct participation in report preparation.

The Paris Principles explicitly set out a role for national human rights institutions in reporting to international human rights mechanisms, while the Optional Protocol to the Convention Against Torture envisages national preventive mechanisms working in tandem with the international sub-committee on prevention.

**9 Initiate, where appropriate, legislative review on oversight of private security companies when these carry out functions normally included within the functions of the statutory security sector.**

Recent years have seen the growth of private security companies exercising a number of functions previously carried out by state bodies. These include custody of prisoners, guarding government and commercial premises, and even carrying out military combat duties. On occasions private companies are employed precisely in order to evade scrutiny by statutory oversight bodies, including *ombudsman* institutions. As

with the privatization of public utilities, it is essential that democratic oversight is maintained even when security functions are privatized.

## Complaints

**10 Create an accessible mechanism in security institutions to facilitate easy filing of complaints by those detained against their will.**

Individuals held against their will or in national forces operating outside the country do not have the same access to the *ombudsman* institution to file complaints as individuals outside those circumstances. Mechanisms are needed to facilitate easy access.

In different countries and circumstances, those mechanisms have included locked post boxes where written complaints can be made, periodic and announced or unannounced visits and inspections, and where appropriate and feasible toll free telephone lines that are not monitored by security sector personnel.

Each institution will have to determine the most appropriate mechanism(s) to achieve this recommendation. Examples shared from the CIS include: The *Ombudsman* Institution of Georgia visits remand prisons and penitentiaries without notification. The Uzbek *Ombudsman* Institution has a mobile response team to receive and handle complaints in closed institutions.

**11 Admit complaints from individuals or bodies that are not themselves directly affected by the matter under complaint. Initiate inquiries into any relevant matter on the ini-**

### **iative of the *ombudsman* institution, without receiving a complaint.**

An important mechanism for ensuring that all complaints pertaining to security bodies are examined is to make complaints admissible even when the complainant is not the individual or group directly affected. This would allow family members, friends or concerned organizations to file complaints on behalf of, for example, persons in detention or security sector personnel.

Similarly, it should be within the mandate of an *ombudsman* institution to initiate an inquiry into any matter on its own initiative, whether or not a complaint has been received. This power of investigation *suo motu* can be of particular relevance in oversight of the security sector.

### **12 Ensure conditions for secure presentation of complaints through confidential mechanisms of communication with *ombudsman* institution representatives. Systematically pursue and seek appropriate disciplinary action against any officials who violate the confidentiality of such communications with an *ombudsman* institution.**

Ombudsmen will receive complaints both from security sector personnel and from those who are detained in security sector institutions. Individuals in closed institutions need to know that a confidential mechanism to communicate with the *ombudsman* institution is secure. This confidentiality is normally provided in the law creating the *ombudsman* institution. For the *ombudsman* institution to be credible, those who complain and may fear retribution require confidential-

ity to be preserved in their communications with the *ombudsman* institution. This in turn requires the *ombudsman* institution to systematically pursue appropriate disciplinary action against those who violate the confidentiality of communications with the *ombudsman* institution.

### **13 Regularly communicate with and seek assistance from civil society organizations in monitoring potential human rights violations by the security sector and/ or encouraging their members and the public to bring complaints to the *ombudsman* institution.**

Several *ombudsman* institutions have developed a number of mechanisms to regularly work with civil society organizations. One is to create a civil society organization advisory council. Such councils provide a mechanism where the *ombudsman* institution and CSOs talk about what each is doing in the security sector, where they can exchange information and inform one another about planned activities and where they can seek each other's advice. They are not mechanisms to instruct one another or seek approval for each other's work and activities.

## **Investigations**

### **14 Develop a set of priorities as a part of strategic planning under which limited resources are first allocated to investigate allegations of gross violations of human rights by security sector institutions. Give issues affecting life, health and safety the highest priority for investigation.**

*Ombudsman* institutions' resources are normally not sufficient to do all they can do under their mandates. Strategic planning is a method to help plan the allocation of limited resources and consult with stakeholders about what they consider most important.

*Ombudsman* institutions normally attend to complaints in the order in which they are received. However, when life, health or safety is in danger, they should prioritize attention to complaints about those situations.

**15** **Assure that security sector officials honor the *ombudsman* institution's powers to visit those held against their will, see documents relevant to an investigation and interview those who may have witnessed violations of human rights.**

New *ombudsman* institutions may find that the provisions of their legislation are not honored by security sector officials. Because these powers are fundamental to conducting fair and impartial examinations of complaints, *ombudsman* institutions in all parts of the world see violations of these powers as significant threats to the institution's existence and work hard to see that these powers are honored.

A number of means are used to defend these powers. Institutions may work to educate officials about them and report offending officials to higher authorities in those agencies, to parliament and its relevant committees, as well as to the president, the public and the media.

**16** **Develop working relationships, wherever possible, with the highest levels of authority and at re-**

**gional and lower levels of authority as well as at security sector institutions and in the government generally, and initiate a systematic, regular dialogue.**

An *ombudsman* institution's chief power is persuasion. It works best when the institution has established a working relationship with all levels of authority at security sector agencies and in the government generally. Part of the art in the work of *ombudsman* institutions is in finding the right person to implement a recommendation. A set of developed working relationships in different security sector agencies can be key to getting recommendations adopted, especially since *ombudsman* institutions are often critics.

Good examples for cooperation between the *ombudsman* institution and security sector agencies, as well as problems regarding human rights and the security sector can be discussed during regular meetings and special roundtables. Good practices applied by the security sector authorities that promote and protect human rights should also be discussed. Regular exchange will promote mutual trust between the *ombudsman* institution and security sector agencies.

**17** **Develop protocols for the regular monitoring of places of detention and agreements with the relevant security agencies facilitating such inspections.**

The effectiveness of monitoring places of detention will be increased if the *ombudsman* institution has already agreed on the scope and procedure for these inspections with the relevant security sector bodies. In particular, *ombudsman*

institutions shall ensure that several members of their staff are officially endorsed with the right to carry out these inspections. This will minimize obstructiveness by officials on the ground. In addition, clear protocols for the *ombudsman* institution's staff will also help to ensure the quality and standardization of monitoring.

**18** Ensure the protection and security of complainants, witnesses, and *ombudsman* institution investigators during and after an investigation. Ensure the confidentiality of interviews, records and communication between the *ombudsman* institution and complainants.

Confidentiality provisions are common in *ombudsman* institution legislation. The institution is responsible for protecting this confidentiality. Laws creating *ombudsman* institutions normally contain protections and immunities for the officeholder and staff. In more serious cases it may be appropriate to implement a witness protection program.

The institution's offices should be separate from any other public office. These should be in locations where people entering to complain are not easily seen or identified as entering the *ombudsman* institution's offices.

Interviews will be conducted in places where individuals are less likely to be seen entering or leaving. Where warranted, these interviews can take place away from the institution's offices. When interviews take place in places of detention they should be beyond the hearing of custodial officials.

Records, including letters and other records of communication with the office, are kept in places where it would be difficult for someone not authorized to see them to enter. For example, they can be kept in locked file cabinets or in rooms that are locked and secure.

Computers containing confidential material should also be kept in rooms that can be locked when no one is present and/ or password protected where appropriate.

**19** Recommend the suspension without prejudice of security personnel during investigations, if their continuation in office may prejudice the outcome of the inquiry.

Investigations into the behavior of security sector agencies and personnel are unlike investigations in other sectors. The continued presence of personnel under investigation may be a threat to complainants and witnesses. If an *ombudsman* institution believes this to be the case, it should have the power to recommend the suspension from duty of personnel under investigation, on full pay and without prejudice to the outcome of the inquiry.

**20** Analyze the facts of an investigation in light of relevant national legislation, international treaties and obligations assumed by the nation and other international standards.

These instruments are the *ombudsman* institution's legal authorities and provide standards that do not change from the examination of one complaint to another. Although reference will be made

as far as possible to the highest national standards protecting human rights, ultimately *ombudsman* institutions should assert the primacy of international human rights standards, whether or not these have been incorporated into national law.<sup>10</sup>

**21 Train specialist personnel with expertise and experience in investigating human rights violations in the security sector. Use outside experts compensated by the *ombudsman* institution if necessary where a knowledge, skill or ability not found among *ombudsman* institution staff is needed to conduct an effective investigation. Ensure that experts selected for this work, whether they are compensated or not, do not have any conflicts of interest with any of the institutions or individuals under investigation.**

Few *ombudsman* institutions have staffs large or diverse enough to contain all the knowledge, skills or abilities that might be needed to conduct effective investigations of all complaints. *Ombudsman* institutions should train their own staff in required skills and expertise, or hire outside experts, which can fill gaps as they are discovered.

*Ombudsman* institutions that are insufficiently financially resourced will likely need external aid to compensate outside experts, since their state budgets may not provide funds for this purpose. *Ombudsman* institutions have also found experts in the local research community or in civil society organizations willing to

volunteer for this purpose, after screening them for conflicts of interest.

In particular, such investigations may require the use of forensic science. Where the pool of forensic scientists is small, it is likely that most are already employed by or contracted to the security sector in each country. In these circumstances, it is important that *ombudsman* institutions should be able to hire experts from academic institutions or from outside the country.

**22 Create or use a pre-existing Special *Ombudsman* Response Team or SORT to conduct specialized investigations on high profile security sector issues that affect human rights violations of large numbers of people.**

A team such as this is helpful when there is a serious and sensitive issue with high public interest about broad systemic issues; facts are complex and/or not agreed upon; and there is no likelihood of an informal resolution. A SORT team consists of experienced and dedicated investigators who conduct complex, issue-driven investigations with tight deadlines and structured investigation plans. It differs from a rapid response team, which may also be helpful, that handles complaints where acting quickly is important.

**23 Hold public hearings where appropriate and when the *ombudsman* institution has the power. Use these hearings both to gather evidence and encourage others whose rights have been violated to come forward.**

<sup>10</sup> Cp.: Recommendation # 1

Public hearings enable *ombudsman* institutions to announce inquiries into matters and ask those affected to come forward. They have been found particularly helpful by *ombudsman* institutions in several provinces of Canada. For example, when those whose rights may have been violated were not immediately identifiable. Not all *ombudsman* institutions have the power under laws that create them to conduct public hearings. Where such power is lacking it would be useful to amend the law to create it. Such hearings can be particularly useful to find people adversely affected by actions of security sector agencies and to develop a systemic analysis of human rights issues in the security sector.

### Investigative Reports

**24** Develop recommendations to security sector agencies to restore violated rights, where possible, and to provide reparation.

This is the *ombudsman* institution's method for proposing solutions for problems discovered during investigations. When recommendations are being developed, *Ombudsman* institutions should test them to determine that if followed they will actually solve the problems discovered during the examination or investigation of the complaint.

The right to redress is a fundamental and non-derogable element of human rights protection. Recommendations for redress and reparation developed by *ombudsman* institutions should be without prejudice to the legal rights of victims of human rights violations before the courts.

**25** Encourage officials to adopt, endorse and implement the recommendations.

Since *ombudsman* institutions cannot require security sector agencies to follow their recommendations, they may need to actively encourage officials to consider adopting actions to implement their recommendations. Simply communicating the recommendations may not be enough.

Experience shows that recommendations requiring spending, such as the improvement of prison conditions, are rarely followed. Here, *ombudsman* institutions need to find ways of convincing government officials of the necessity of such investments in order to combat persistent violations of human rights in correctional facilities.

**26** Issue investigative reports in a timely manner. Communicate the results to complainants, as well as officials and civil servants whose actions were the subject of the investigation.

A delay in reporting may be justice denied. Computerized case registration systems that track how long complaints have been open can be used to supervise staff to ensure that complaints are handled in a timely manner.

Once a report is complete, it should be communicated to the complainant as well as anyone whose actions were the target of the complaint or investigation.

**27** Request and expect substantive and timely responses from the security sector agency being investigated. Actively pursue responses

**from officials and civil servants who are not responding in a timely manner.**

Legislation creating *ombudsman* institutions often specifies a time frame for responses. Most *ombudsman* institutions take lack of a timely response as a serious threat to their effectiveness. *Ombudsman* institutions can use computerized case management systems or other means to track when communications and reports are sent and what deadlines are set for responses.

**28** Communicate with appropriate higher levels of government officials, including the highest levels, when security sector officials are unreasonably refusing to respond to investigative reports or to implement *ombudsman* institution recommendations. Where applicable, and when there is a high chance for success, the *ombudsman* institution may file suit in an administrative court seeking to have its recommendation(s) implemented.

As with other agencies under the *ombudsman* institution's competence, where responses are not forthcoming, the institution needs to pursue them actively. This may require elevating the matter to higher levels of authority within the agency, and occasionally to the highest levels, to obtain a response to the *ombudsman* institution's recommendations. If that is not effective, the *ombudsman* institution will need to seek the assistance of higher levels of authority outside of the agency.

**29** Present investigative reports to appropriate parliamentary committees and other institutions,

**especially if and when security sector institutions investigated have refused to respond or implement *ombudsman* institution recommendations. Ask parliament in appropriate circumstances to summon those who have not responded or not implemented recommendations before the appropriate committee(s) to explain their actions.**

In some countries, certain security sector agencies and officials either refuse to respond to or implement recommendations. Internationally, *ombudsman* institutions have a number of ways to deal with such cases. Informing parliament is one of the appropriate ways to bring these refusals, which should not be tolerated, to the attention of other institutions that may use their powers to seek responses. Since *ombudsman* institutions are an aspect of parliamentary oversight, it is appropriate to bring these matters to parliament.

A working relationship with various parliamentary committees is helpful when a committee summons those security sector officials or civil servants who have not responded to nor implemented recommendations. This mechanism is used by a number of *ombudsman* institutions, particularly in Canada and other Commonwealth countries, to call such officials to account.

**30** Release investigative reports to the media as appropriate and to bring public pressure to bear on security sector officials who have refused to honor the powers and/ or recommendations of an *ombudsman* institution. Strictly follow the rules of confidentiality when interacting with the media.

Persuasion often works to get recommendations adopted or the *ombudsman* institution's powers observed. When this fails, as it sometimes does, other methods may be needed. The *ombudsman* institution's final power is publicity. *Ombudsman* institutions need good relationships with the mass media for moments when reports are released and publicity is helpful or required.

**31 Inform the public prosecutor of any facts that imply criminal behavior and recommend prosecution when the circumstances warrant, especially if the public prosecutor is unreasonably refusing to prosecute.**

Most *ombudsman* institutions have the power to send information to the public prosecutor when they have discovered facts that imply criminal behavior. This is done to allow the latter to decide whether to prosecute. A few *ombudsman* institutions, like the Public Defender of Georgia, have the power to recommend prosecution.

Because some public prosecutors are not independent and may be reluctant or refuse to attend to matters sent by an *ombudsman* institution, the institution may need to pursue prosecution actively. This can sometimes be accomplished by applying to increasing levels of authority within the public prosecutor's office. If the matter is particularly serious, the *ombudsman* institution may wish to bring it to the attention of the highest levels of authority both within the public prosecutor's office, the parliament and the executive.

**32 Apply to the constitutional court for an assessment of the**

**constitutionality or legality of national legislation or regulations where the *ombudsman* institution believes they may be in contradiction with the constitution.**

While inquiring into human rights issues in the security sector, the *ombudsman* institution may find instances where national legislation or regulations are thought to contradict with the constitution. Many countries give *ombudsman* institutions the power to appeal to the constitutional court, especially when ordinary citizens do not have that right. (The view is sometimes taken that giving this power to the *ombudsman* institution is one way of including citizens in the court's process without actually specifically allowing individuals to apply to the court.)

The *Ombudsman* Institution of Poland is probably the most active institution making appeals to the constitutional court. Others have been active as well.

The *ombudsman* institutions of some countries may apply to administrative courts where appropriate to restore rights violated by security sector officials.

## Annual and Special Reports

**33 Devote a section of the *ombudsman* institution's annual report to describing and analyzing the human rights situation relating to the security sector and the *ombudsman* institution's activities in the security sector.**

This is the *ombudsman* institution's opportunity to make public statements on human rights in the security sector. It is also a method for the *ombudsman* insti-

tution to account for its activities in the security sector.

### **34 Highlight good practices security sector authorities use to promote and protect human rights.**

Praise focuses attention on good practice worthy of repetition. It helps prevent the *ombudsman* institution from always being seen as a critic and reinforces positive behavior by security sector agencies.

### **35 Identify which bodies are the subject of most complaints of human rights violations. Identify actions security sector institutions can take to promote and protect human rights and prevent their violation.**

*Ombudsman* institutions with properly designed computerized registration systems of complaints can use their databases to calculate which agencies have the highest percentages of complaints of human rights violations out of the total number of complaints the *ombudsman* institution has received. This data forms the foundation for analysis of which institutions are most often the targets of complaints. A well-designed database will also allow the *ombudsman* institution to determine which agency has the highest percentage of well-founded complaints. Agencies with low percentages of well-founded complaints may have problems with the way the public perceives them.

Numbers are an initial indicator of potential problems. They need to be analyzed. Sometimes agencies with the highest amount of contact and interaction with the public will have the highest percentage of complaints. Sometimes the public

will file more complaints when they feel they have a better chance of success. Conversely, more feared security bodies may be the subject of fewer complaints because the public has no confidence that their grievances will be addressed. Further qualitative research, such as opinion surveys of complainants, may help to discover why different agencies receive the proportion of complaints that they do.

### **36 Identify actions security institutions are taking to protect human rights of vulnerable groups such as minorities, refugees or internally displaced persons, women, children, non-citizens, and people with disabilities.**

This provides another opportunity for praise because the analysis will likely identify good practices other agencies could employ. Socially disadvantaged and vulnerable groups are more likely to be the victim of human rights violations. Both the *ombudsman* institution and security sector agencies need to prioritize the protection of these groups.

### **37 Disseminate annual and specialized reports widely. Present the annual report to the parliament and appropriate committees of Parliament, including but not limited to those on human rights, defense, interior, legislation etc. Discuss with the parliament and its committees any needs for new legislation or amendments to improve the observance of human rights and also of the powers of the *ombudsman* institution.**

*Ombudsman* institutions distribute their reports broadly to parliament, executive

agencies and officials, the judiciary, and the public. *Ombudsman* institutions should also seek a high level of media exposure for these reports. This makes them accountable for their work and informs those affected what has been done and what is the state of human rights in the country. Such reports may be distributed to civil society, regional and international organizations and relevant United Nations bodies. In particular, reports may be routinely sent to treaty monitoring bodies, as well as to relevant expert bodies such as UN Special Rapporteurs and working groups.

These reports are also excellent mechanisms for highlighting areas where legislation needs to be improved both to promote protection of human rights and to indicate where the law creating the *ombudsman* institution needs to be amended to provide or strengthen its powers needed in the security sector.

**38** Contribute to the development of integrated national human rights plans, which, *inter alia*, should include a section on human rights and the security sector. Monitor and describe in the annual report progress made in implementing the plans. Seek creative methods for lowering human rights violations and for monitoring the security sector.

The World Conference on Human Rights recommended in the Vienna Declaration and Programme of Action,<sup>11</sup> adopted in

June 1993, that states consider the desirability of drawing up a national action plan identifying steps to improve the promotion and protection of human rights.

Lithuania and Moldova developed such plans and *ombudsman* institutions in those countries participated as partners or executors. These plans used comprehensive approaches to promoting and protecting human rights. Kazakhstan is in the process of developing a national action plan, and Armenia is considering this option. Where countries are willing to develop integrated national plans for the promotion and protection of human rights, *ombudsman* institutions shall seek to participate in this process and make sure that such plans cover issues related to human rights violations by the security sector.

## Monitoring/ introducing legislation

**39** Examine proposed legislation for the security sector to ensure that it is in harmony with national legislation creating the *ombudsman* institution and that it observes international norms for the protection and promotion of human rights. Make recommendations to Government before legislation is introduced and to parliament after it is introduced where necessary to improve observance of human rights and the *ombudsman* institution's powers.<sup>12</sup>

<sup>11</sup> World Conference on Human Rights recommended in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna, 25 June 1993; available at: <http://www.ohchr.org/english/law/pdf/vienna.pdf>

<sup>12</sup> *Cp.*: also Recommendation #2.

*Ombudsman* institutions with competence over human rights often have power to monitor legislation and advise the government and parliament on how to legislate according to international norms to protect and promote human rights. Monitoring legislation affecting the security sector increases the likelihood that legislation will observe international norms.

**40** **Develop or participate in the development of new legislation to improve the promotion and protection of human rights in the security sector and in conformity with international treaties and standards. Participate in discussion, elaboration and implementation of security sector reform.**

*Ombudsman* institutions have significant data about where problems exist in the security sector from the complaints filed with them. That data can be used to inform legislative efforts at security sector reform.

**41** **Propose ratification without reservation of international and regional human rights treaties the country has not adopted. Monitor the incorporation of ratified treaties into national law.**

Proposing ratification without reservation of treaties the country has not adopted will improve the promotion and protection of human rights. Most human rights treaties, especially those relating to civil and political rights, will have direct application to the security sector.

In some legal systems, ratified international instruments are incorporated automatically into national law. Where this is not the case, *ombudsman* institutions

will need to monitor both that the treaty is legislated domestically and that other existing laws are amended to bring them into conformity with the country's treaty obligations.

**42** **Introduce legislation to improve security sector institutions and their observance of human rights in countries where the *ombudsman* institution has this power under the law creating it.**

For those *ombudsman* institutions with legislative initiative, introducing legislation improving the security sector will benefit those affected by the legislation. This also allows the *ombudsman* institution to contribute its experience and expertise to increased observance of human rights by security sector institutions.

**43** **Develop or obtain access to national, regional and international legal databases.**

Because *ombudsman* institutions refer to laws and other legal documents in their analysis of the facts under the law, they need access to databases containing those documents

## Education

**44** **Create a program to educate security sector personnel about the role, functions and powers of *ombudsman* institution representatives.**

Educating new and current security sector personnel about *Ombudsman* institutions is one of the most effective ways to improve relations and increase the likelihood that recommendations will be im-

plemented and that personnel will cooperate with the *ombudsman* institution.

The sooner this education can take place in the career of security sector personnel, the better. The best time to inform someone about the role, functions and powers of the *ombudsman* institution is before that person is the target of a complaint. The *ombudsman* institution may collaborate with the bodies responsible for security sector training, such as police and military academies, to incorporate information on this into the regular curriculum offered to new recruits.

**45 Create programs or assist in current ones to educate security sector personnel in methods of promoting and protecting the human rights of detained individuals and others with whom security personnel interact.**

Many *ombudsman* institutions place a high priority on human rights training for security sector personnel as an effective program for increasing the level of human rights observance in a country and a mechanism for preventing violations. As with the previous recommendation, this is most effectively achieved if incorporated into basic training curricula given to all newly recruited personnel. For personnel who routinely have responsibility for detained persons – including police, military police and prison officers – such training is essential and indispensable.

**46 Educate government officials and leaders about their responsibilities under international treaties and other obligations to observe**

**the human rights of those with whom they interact.**

Similarly, *ombudsman* institutions are central actors in educating government officials and leaders about the nation's human rights responsibilities.

**47 Educate the public about their rights both under national legislation and international treaties and other international obligations when interacting with security sector personnel. Seek creative and inexpensive methods to conduct this education.**

The general public's lack of knowledge about their rights and the mechanisms for the protection of these rights, including about the role and function of *ombudsman* institutions, has been identified as one of the most prevalent reasons for human rights violations by security sector agencies. *Ombudsman* institutions have employed a variety of methods to educate the public. Columns written for newspapers, public service videos, and training programs for civil society organizations are among the ways *ombudsman* institutions have increased understanding and awareness of human rights.

An *ombudsman* institution in Brazil performed puppet shows for children about human rights in public schools. The Latvian National Human Rights Office early in its history printed a list of an individual's rights when questioned by the police on cards the size of business cards. People could carry them in their wallets or purses and show them to police if they thought their rights were being violated. The office printed large numbers of cards at a relatively inexpensive cost.

**48** Undertake educational efforts in cooperation or conjunction with civil society organizations, academic institutions, universities, research and scientific organizations, donors and international intergovernmental organizations.

Partnering with other institutions, as long as there is no conflict of mandate, interest or purpose, is a way of extending the educational efforts of *ombudsman* institutions.

### International cooperation and participation

**49** Cooperate with *ombudsman* institutions in other countries on bilateral, regional and international bases to exchange information and good practices on the role of *ombudsman* institutions in the security sector.

Cooperation and communication between *ombudsman* institutions helps spread ideas worthy of being implemented in different countries. This cooperation exists through mechanisms such as bilateral, regional and international meetings between *ombudsman* institutions as well as through publications, web pages, list servers, etc.

**50** Approach international organizations and bilateral donor

agencies with project proposals to strengthen the role of the *ombudsman* institution in security sector oversight, demonstrating that an effective *ombudsman* institution requires international funding.

International donors who provide funding or carry out projects in the security sector rarely involve *ombudsman* institutions. In addition, *ombudsman* institutions often lack adequate funding from the national budget.<sup>13</sup> *Ombudsman* institutions should take proactive efforts to attract national and international financial support for their work.

Projects in support of *ombudsman* institutions in the past have funded programs helpful in the security sector, including:

- Educating the public, security sector officials, government officials and leaders, parliament and other groups;
- Hiring independent experts;
- Training *ombudsman* institution staff and investigators to acquire the necessary skills to oversee the security sector; and
- Regional meetings of personnel from *ombudsman* institutions to promote an exchange of experience.

<sup>13</sup> Cp.: Recommendation # 6.



# Resources

**Principles Relating to  
the Status of National  
Institutions  
(The Paris Principles)**

*United Nations General Assembly*

## Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
  - (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

Adopted by the United Nations General Assembly on 20 December 1993: Annex to Resolution 48/134, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement>.

- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

## Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
  - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - (b) Trends in philosophical or religious thought;
  - (c) Universities and qualified experts;
  - (d) Parliament;
  - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this fund-

ing should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

## Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, asso-

ciations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.



**Optional Protocol to  
the Convention against Torture  
and other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

*United Nations General Assembly*

## Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

## PART I

### General principles

#### *Article 1*

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Adopted by the United Nations General Assembly on 18 December 2002: Annex to Resolution A/RES/57/199. Entered into force on 22 June 2006. Available at: <http://www.ohchr.org/english/law/pdf/cat-one.pdf>.

## **Article 2**

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

## **Article 3**

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

## **Article 4**

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

## **PART II**

### **Subcommittee on Prevention**

## **Article 5**

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Subcommittee on Prevention may be nationals of the same State.
6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

## **Article 6**

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.
2.
  - (a) The nominees shall have the nationality of a State Party to the present Protocol;
  - (b) At least one of the two candidates shall have the nationality of the nominating State Party;
  - (c) No more than two nationals of a State Party shall be nominated;
  - (d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.
3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

## **Article 7**

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

- (a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;
  - (b) The initial election shall be held no later than six months after the entry into force of the present Protocol;
  - (c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;
  - (d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.
2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:
  - (a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;
  - (b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;
  - (c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

### **Article 8**

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

## **Article 9**

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 ( d).

## **Article 10**

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
  - (a) Half the members plus one shall constitute a quorum;
  - (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
  - (c) The Subcommittee on Prevention shall meet in camera.
3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

## **PART III**

### **Mandate of the Subcommittee on Prevention**

## **Article 11**

1. The Subcommittee on Prevention shall:
  - (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
  - (b) In regard to the national preventive mechanisms:
    - (i) Advise and assist States Parties, when necessary, in their establishment;
    - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

- (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
  - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- (c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

### ***Article 12***

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

### ***Article 13***

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated

professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

### **Article 14**

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:
  - (a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
  - (b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
  - (c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;
  - (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
  - (e) The liberty to choose the places it wants to visit and the persons it wants to interview.
2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

### **Article 15**

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

## **Article 16**

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.
4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

## **PART IV**

### **National preventive mechanisms**

## **Article 17**

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.

## **Article 18**

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

### **Article 19**

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

### **Article 20**

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

### **Article 21**

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive

mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

### ***Article 22***

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

### ***Article 23***

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

## **PART V**

### **Declaration**

### ***Article 24***

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

## **PART VI**

### **Financial provisions**

### ***Article 25***

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

### ***Article 26***

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regula-

tions and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

## **PART VII**

### **Final provisions**

#### ***Article 27***

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### ***Article 28***

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

#### ***Article 29***

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

### **Article 30**

No reservations shall be made to the present Protocol.

### **Article 31**

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

### **Article 32**

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

### **Article 33**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.
3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

### **Article 34**

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the

present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

### ***Article 35***

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

### ***Article 36***

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

### ***Article 37***

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

# Assessment Tool

*UNDP/DCAF*

# Questionnaire: *Ombudsman* Institutions and Security Sector Oversight

## Introduction

The questionnaire is intended to help map the relationship between *ombudsman* institutions and security sector agencies. Security sector agencies are responsible for preventing human rights abuses, while at the same time they are all too often involved in perpetrating violations. *Ombudsman* institutions can play a key role in enhancing civilian oversight of the security sector by addressing existing and preventing future abuses.

Instructions for completing the questionnaire:

- Respondents are asked to fill out the questionnaire by computer or with capital typed letters.
- Respondents can type directly into the grey spaces or click on the respective box if they respond to a YES or NO question. If respondents want to change their answer, they have to click on the box again to unselect it and then select the correct box.
- Each *ombudsman* institution should submit one questionnaire, not several.
- If any question is not applicable to your institution, please indicate and give the reason (e.g. lacking mandate).
- If the requested information is not available, please state that it is not available rather than providing no answer. Similarly, if the respondent does not know the answer to a question, please simply state “I don’t know.”
- Please do not leave any answer blank.
- Respondents are asked to add any additional information that may be useful and to use additional sheets if the space provided is not sufficient.

## Definitions<sup>1</sup>

Security sector agencies: Include all state services and agencies that have the legitimate authority to use force, order the use of force or threaten to use force. Normally the security sector agencies include the military, paramilitary units (like military police) police, border guard and other law-enforcement services. Please note that security is considered not to refer to state security, but to public security; in this case, this is the security of citizens.

<sup>1</sup> All definitions are derived from materials in the ‘Glossary’ of DCAF Document No.4, available at: [http://dcaf.ch/docs/dcaf\\_doc4.pdf](http://dcaf.ch/docs/dcaf_doc4.pdf).

The concept of security sector governance implies a concept in which the security sector is not only under the direct control of and accountable to democratically-elected and legitimate civilian governments and within which each segment is assigned legislatively-specified roles, but also in which the instruments of the entire security sector are people-centered, equitable, accountable, transparent, subject to the rule of law, open to legal recourse, and capable of engendering both expert and public participation and consultation in planning and decision-making via efficient public sector management, the assimilation of relevant international norms, and the involvement of civil society and media in security issues.

*Please indicate*

Your country: \_\_\_\_\_

Name of your institution: \_\_\_\_\_

**Situation Analysis: Security Sector Agencies and Ombudsman Institutions**

1) a) Approximately, what is the overall caseload of your *ombudsman* institution, that is how many cases do you follow-up on (including complaints, contacts, etc.) on an annual basis? Please indicate the average over the last five years.

\_\_\_\_\_

b) From your overall caseload, how many cases involve security sector agencies and their personnel as proven or accused violators?

\_\_\_\_\_

2) Which are the institutions of the security sector mostly responsible for cases dealt with by your institution? If you do not have any authorization over the listed ones please indicate that by placing the letters NA for “no authorization” in the first column to the left of any institution over which the law creating your office gives you no competence. Please rank the institutions from highest percentage of total complaints to lowest and indicate the percentages of complaints received.

Rank	% of Total Complaints	Institution
		Police
		Pre-trial detention centers
		Correction facilities, including prisons
		Border Guard
		Military
		Para-military forces
		Other security sector agencies (Please specify each below separately) _____

- 3) What are currently the most prevalent security-related human rights abuses reported to your *ombudsman* institution? Please specify and expand as applicable to your institution/ country and provide a rating of the abuses. For the different types of abuses, please indicate 1-10: 1 indicating a low percentage of the total number of complaints; 10 indicating a very high percentage of the total number of complaints.

Rank	Type of Abuse
	Complaints about ill-treatment in pre-trial detention centers
	Complaints about ill-treatment in correction facilities, including prisons
	Ill-treatment during police investigations
	Complaints about excessive use of force by security sector agencies during crowd-control operations
	Complaints about prison conditions
	Abuses of conscripts in the military
	Other types of abuses:

- 4) What degree of cooperation exists between the *ombudsman* institution and the different security sector institutions? (For each of the institution listed below, please indicate 1 - 10: 1 indicating a very low degree of cooperation; 10 indicating a very high degree of cooperation.)
- \_\_\_\_\_ Police
- \_\_\_\_\_ Pre-trial detention centers
- \_\_\_\_\_ Correction facilities, including prisons
- \_\_\_\_\_ Military
- \_\_\_\_\_ Border guard
- \_\_\_\_\_ Para-military forces
- \_\_\_\_\_ Other agencies of the security sector
- 5) What would you recommend to increase the cooperation between *ombudsman* institutions and security sector agencies? \_\_\_\_\_

### **Investigations of Complaints about Human Rights Violations by the Security Sector**

- 6) What types of problems has the *ombudsman* institution encountered when starting an investigation of a complaint about a security sector agency? Are there specific problems related to this sector that make it a unique case in comparison to complaints about other public sectors? \_\_\_\_\_

7) a) Do you have access to the penitentiary facilities?

- To pre-trial detention centers: Yes/ No
- To prisons: Yes/ No
- To correction facilities: Yes/ No
- To military pre-trial detention centers: Yes/ No
- To military prisons: Yes/ No
- To other penitentiary facilities: Yes/ No

(Please specify which other penitentiary facilities): \_\_\_\_\_

b) If Yes, please indicate:

	Pre-trial detention centers	Prisons	Correction facilities	Military prisons	Military Pre-trial detention centers	Other penitentiary Facilities (as specified above)
<i>Do you have access without advance notification?</i>	Yes/ No	Yes/ No	Yes/ No	Yes/ No	Yes/ No	Yes/ No
<i>Can you conduct hearings there without presence of administration?</i>	Yes/ No	Yes/ No	Yes/ No	Yes/ No	Yes/ No	Yes/ No
<i>Can you access all documentation there?</i>	Yes/ No	Yes/ No	Yes/ No	Yes/ No	Yes/ No	Yes/ No
<i>Do the relevant authorities at these agencies put your recommendations in to effect?</i>	Yes/ No	Yes/ No	Yes/ No	Yes/ No	Yes/ No	Yes/ No

Your comments: \_\_\_\_\_

8) In which cases do you find it most problematic to conduct investigations? Please indicate the most problematic cases for your institution:

- In cases where human rights violations were committed within a security sector agency affecting officials of the agency itself (e.g. abuses of conscripts in the military). \_\_\_\_\_
- In cases where human rights violations affect civilians but were committed by officials of a security sector agency. \_\_\_\_\_
- What are the different problems you face in these cases? \_\_\_\_\_

9) How do you get relevant information while conducting investigations in cases that are related to the security sector? Specifically, please indicate:

- how often the *ombudsman* institution takes the steps outlined below, and
- how effective these steps have been in practice.

I) a) Request the security sector agency provide documents to the investigators:

Often  Somewhat often  Usually  Hardly  Never

b) How effective is this step?

Very effective  Effective  Somewhat effective  
 Hardly effective  Very ineffective

II) a) Request the security sector agency for explanation

Often  Somewhat often  Usually  Hardly  Never

b) How effective is this step?

Very effective  Effective  Somewhat effective  
 Hardly effective  Very ineffective

III) a) Visit the security sector agency after informing them about the purpose of the planned visit, conducting hearings and visiting premises in person

Often  Somewhat often  Usually  Hardly  Never

b) How effective is this step?

Very effective  Effective  Somewhat effective  
 Hardly effective  Very ineffective

IV) a) Visiting the security sector agency without informing them in advance, conducting hearings and visiting premises in person

Often  Somewhat often  Usually  Hardly  Never

b) How effective is this step?

Very effective  Effective  Somewhat effective  
 Hardly effective  Very ineffective

Your comments: \_\_\_\_\_

10) Do you have access to classified information?

Yes/ No

11) Do you get access to internal regulations/ sub-laws that set standards for and guide behavior of the security sector personnel?

Yes/ No

12) Have security sector agencies introduced internal disciplinary measures based on your recommendations to redress and prevent human rights violations?

Yes/ No

If yes, please give examples: \_\_\_\_\_

13) Have you ever reported human rights violations committed by security sector agencies? Please share to whom you reported and the reactions you received.

	Specification	Did you report upon request or upon your own initiative?	What kind of reactions did you receive?
To the Parliament	Yes/ No  If yes, did you report ___ To the parliament ___ To the parliament's human rights committee ___ To the parliament's security committee ___ To single parliamentarians ___ To other parliamentary committees Please specify which: _____	___ own initiative ___ upon request	
To the President	Yes/ No	___ own initiative ___ upon request	
To specific ministries <sup>2</sup>	Yes/ No  If yes, please specify the ministries: _____	___ own initiative ___ upon request	
To the media <sup>3</sup>	Yes/ No	___ own initiative ___ upon request	
To the public (Including Civil Society Organizations) <sup>4</sup>	Yes/ No  If yes, please specify to whom you reported: _____	___ own initiative ___ upon request	

14) Have you ever received a request by a security sector agency for advice on human rights issues?

Yes/ No

If yes, what was the request and how was your advice received: \_\_\_\_\_

**Preventative Measures**

15) What do you see is the role of the ombudsman institution in preventing human rights violations committed by security sector agencies?

\_\_\_\_\_

<sup>2</sup> If you have authorization.

<sup>3</sup> If you have authorization to do so, or if you otherwise established this practice.

<sup>4</sup> If you have authorization to do so, or if you otherwise established this practice.

16) Has your *ombudsman* institution been involved in discussing, designing or implementing security sector reform in your country?

Yes/ No

If yes, please describe the involvement and how effective you think it was: \_\_\_\_\_

17) Does your *ombudsman* institution have the right to initiate legislative processes and recommend new instruments regarding security issues?

Yes/ No

a) If yes:

In which areas has that already been done? Have any of the measures your institution was involved with become law? \_\_\_\_\_

b) If you have not done this, are you planning to initiate law-amendments or legislative processes in the field of public security? \_\_\_\_\_

18) Has your *ombudsman* institution commented on draft laws which concern security issues?

Yes/ No

a) If yes:

In which areas have you already done that? \_\_\_\_\_

b) Did the parliament implement your comments/ suggestions to the laws?

(Please specify): \_\_\_\_\_

19) Does the *ombudsman* institution have the right to turn to the constitutional court in case it discovers discriminatory laws or laws that otherwise contradict the country's commitments to international human rights law concerning security issues?

Yes/ No

If yes, have you already turned to the constitutional court on security matters? (Please share your experience \_\_\_\_\_)

20) a) Have you ever conducted trainings on human rights for staff from different security sector agencies?

Yes/ No

If yes, for which segments of the security sector did you conduct the training? (Please indicate also on which level the officials work to whom the training was delivered – officials, mid-management, management level)

\_\_\_ To the police Level \_\_\_\_\_

\_\_\_ To staff of pre-trial detention centers Level \_\_\_\_\_

- \_\_\_ To staff of correctional facilities Level \_\_\_\_\_
- \_\_\_ To staff of prisons Level \_\_\_\_\_
- \_\_\_ To the border guard Level \_\_\_\_\_
- \_\_\_ To members of the military Level \_\_\_\_\_

b) What was the reception of such trainings? \_\_\_\_\_

c) According to your experience: What are the most important capacity gaps that lead to human rights violations by security sector agencies? \_\_\_\_\_

21) Did your *ombudsman* institution develop and deliver any other educational activities on human rights for security sector agencies?

Yes/ No

If yes, please specify: \_\_\_\_\_

22) Do international donors consult or otherwise involve the *ombudsman* institution in projects that concern security sector reform or other security related issues?

Yes/ No

If yes, please indicate the type of project and your involvement: \_\_\_\_\_

