

## HUMAN RIGHTS OMBUDSMAN

The United Nations has been debating the idea of an ombudsman for several decades. Many good ideas were developed under Secretary-Generals Pérez de Cuellar (in 1985 and 1986) and Butros-Ghali (in 1995), but no action was ever agreed upon and taken.

"Feasibility of establishing an office of Ombudsman at the UN: Report of the Secretary-General", UN document A/C.5/40/38 of **5 November 1985**,

"Establishment of an office of ombudsman in the Secretariat and streamlining of the appeals procedures: Report of the Secretary-General" , UN document A/C.5/41/14 of **3 November 1986**, and

"Reform of the internal system of justice in the UN Secretariat: Report of the Secretary-General", UN document A/C.5/50/2 of **27 September 1995**.

In 2002, however, and after further discussions, Secretary-General Annan finally appointed the first UN Ombudsman, as a source of support for staff throughout the Organization. Mr. Annan noted that the new full-time function needs time and experience to determine the volume of work and if any additional support is needed, and, if so, to develop a broader system in light of the experience gained. This is a quite timid start, in relation to all the Secretariat problems discussed in this archive.

The Ombudsman, as decided by the General Assembly, is an Assistant-Secretary-General with a professional Legal Officer to assist her. The Ombudsman is located in the Secretary-General's office to informally address employment-related problems of staff members; to provide an open, readily available and confidential source of support to staff; and to seek answers to questions and aid in resolving problems and overcoming conflicts in the workplace. Mr. Annan asserted that the new function will strengthen informal mediation and that, therefore, it replaces the old panels on discrimination and other grievances. The Ombudsman reports "regularly" on her work, but only to the Secretary-General.

"Administration of justice in the Secretariat: Report of the Secretary-General," UN document A/56/800 of **13 February 2002**, section III, paras. 27-30, and Annex II.

[Note: the first Ombudsman, Ms. Patricia Durrant, was appointed, for a non-renewable five-year term, in October 2002.]

The new arrangement sounds encouraging, but not on closer examination. For one thing, two (2!) people are to support some 40,000 staff at a hundred or more duty stations around the world in resolving problems and conflicts in their workplaces. If the new office would be taken seriously, it would be inundated by a flood of work and quickly grind to a halt. The new office therefore seems to IO Watch to be just another "fig leaf" accessory to demonstrate accountability and legitimate staff support in the UN without really providing it.

Moreover, the foreseeable weaknesses of the ombudsman process in the UN are long-standing. As Mark Roy wrote in 1987, for instance:

"The Administration's latest proposal for 'Ombudsman panels' actually reflects the existing unsatisfactory and ineffective "Discrimination panels" ... and amounts to 'putting the old wine in the new bottle' ...

It is on record that the 'Ombudsman Panels' established in the UNDP and UNICEF have not at all proved to be successful in resolving staff-management disputes in the past ... forcing staff in those organs ... to seek justice through the [JAB and the UNAT].

... There is a popular belief in the Secretariat that Directors are, in fact, generally responsible for contestable arbitrary, discriminatory or prejudicial decisions in the first instance. ...

I earnestly propose that the Ombudsman at [UN headquarters] be at [ASG or USG] level and be elected by the General Assembly ... from among candidates [who are] ombudsmen currently practicing or retired in Member States.

The Ombudsman at Headquarters should function independently from the Administration, should be solely responsible and accountable to the General Assembly, and should submit to the General Assembly an annual report on the operations of the entire Ombudsman system ..."

Mark Roy, "Ombudsman politics", Secretariat News (New York), **30 September 1987**, p. 2.

[Note: Mr. Roy was former chairman of the Legal Committee of the Staff Council in New York.]

The new ombudsman thus seems, like the OIOS, to be ostensibly independent but in fact is still under the firm control of the Secretary-General. This is illustrated in particular by the lack of any direct public reporting on her work. More bad news comes from the experience of the staff discrimination panels which she replaces. They were established in 1987 and for a while carried out important conciliation functions, resolving disputes informally and at an early stage in some 80 percent of the cases. They also -- quite unusually for the internal justice system -- attempted, for a number of years and long ago, to provide regular, published annual reports at various duty stations on their activities, patterns of cases, and solutions achieved.

But the panels clearly fell apart during the late 1990s, perhaps in conjunction with the powerful movement to "free the managers" of the UN Secretariat. The Secretary-General's 2000 report bluntly stated that:

"The current informal mediation processes are not considered fully adequate. The panels on discrimination and other grievances are under-utilized by staff for a number of reasons, among them that panel members are not trained to mediate, and their findings are often not substantiated by evidence and managers thus resist cooperating with them."

"Human resources management reform: Report of the Secretary-General", A/55/253, 1 August 2000, Annex V, para. 3. [emphasis added]

As in other areas, the above shows that UN managers, who have no more legal expertise than the panels, were casually able to reject the cases discussed with them out of hand, and no one, the Secretary-General included, seemed to object to such cavalier treatment. In addition, no professional staff member has the skills or the status necessary to "mediate" with an aggressive UN director used to impunity.

Mr. Annan expressed confidence that the new ombudsman would "strengthen the informal mediation process", but the Ombudsman's higher status is cancelled out by the tiny size of the office, and any clever manager knows how to delay and obstruct an overworked superior, who has only informal (i.e., token) power to begin with.

However, the new Ombudsman could still become a very meaningful and credible UN accountability and reform agent, by accepting and implementing a very persuasive recommendation made -- again -- by Erskine Childers and Brian Urquhart in their 1994 study on *Reforming the United Nations system*. They observed that:

"The United Nations has a record of considerable achievement in the field of human rights even if [too often] marred by double standards and the influence of power-politics. If nothing more had been done ... at the United Nations than [Member States'] negotiation and adoption of nearly 70 instruments of the International Bill of Human Rights, this alone would fully justify the existence of the organization.

*This study addresses only the most salient reform needs. One ... important need [deserving] ... early attention ... is a mechanism for independently monitoring the compliance of the UN system itself with its Human Rights mandates.*

Serious issues have been raised by authoritative sources regarding the involvement of agencies of the UN system, including the World Bank and the IMF, ... in development and monetary practices infringing or categorically violating human rights in developing countries ...

{Also,} the greater the UN's involvement in peace-enforcement and other operations that may employ force, the more vital it becomes to have transparent and independent human rights supervision ... as much to protect the organization from false or inflated charges of human rights abuse as to ensure that if these occur they are

properly investigated and reported."

Erskine Childers, with Brian Urquhart, in Chapter X, "The international civil service", in "Renewing the United Nations System", Development Dialogue, 1994:1, Dag Hammarskjold Foundation, Uppsala, Sweden, 1994, pp. 105, 111. [emphasis added.]

They then made the following recommendation:

3. "The General Assembly should appoint an independent Ombuds-Panel (or equivalent title) on the Human Rights Performance of the United Nations System.

a. The Panel should comprise one full-time Chief for this work, with an independent office serviced by the Office of the UN High Commissioner, and a viable list of persons willing to serve on ready call, chosen on a representative basis.

b. The Panel should monitor, intermediate, and regularly report on the compliance of all major entities of the UN System with all Human Rights instruments. The Panel should present independent reports on such compliance to the General Assembly, the relevant executive head having the option of submitting a Note of Comment.

c. On every major UN field mission comprising military and/or police units, one Ombudsman (with staff as may be needed) should independently monitor its work in relation to necessary human rights standards; intervene when and if necessary; report on incidents, report overall at appropriate intervals during long Missions, and report on their termination."

Erskine Childers, with Brian Urquhart, in Chapter X, "The international civil service", in "Renewing the United Nations System", Development Dialogue, 1994:1, Dag Hammarskjold Foundation, Uppsala, Sweden, 1994, pp. 202-203.

[Note: the field presence and investigations are certainly needed now, as discussed in the Refugee sexual abuses subsection preceding.]

Details would of course need to be worked out, and perhaps concentration could be on the UN first rather than on the entire UN system, especially since that would cover most of the system's field operations. But a Human Rights Ombuds-Panel for the UN and the UN system could easily be built into the new Ombudsman office, and would have much more important work to do, as indicated above, than providing "fig-leaf" informal mediation for staff grievances.

The expanded Ombuds-Panel could be a very appropriate office to support several of the recommended reforms presented in this archive:

-- as an important, confidential support mechanism for staff who feel ignored or mistreated by the half-hearted [and mistrusted] OIOS hotline (see Suppressed Whistleblowers );

-- in Revision of the code of conduct above;

-- in helping to conduct, and then acting upon, an External experts justice reform review , also above; and

-- in Expert personnel reviews , as proposed under Answers: A Starting Point in the Recent Developments section of this archive.

The direct relevance of the Ombudsman office to the internal experts justice review, and suppressed whistleblowers, is indicated by the first quote below, and to revision of the UN "code of conduct" by the second quote, while the centrality of labour rights in expert personnel reviews is discussed in the "Answers" section:

"The General Assembly, ...

Convinced that the independence and impartiality of the judiciary are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice and should therefore be respected in all circumstances;

Emphasizing that the right to access to justice, as contained in applicable human rights instruments, forms an important basis for strengthening the rule of law through the administration of justice; ...

Reaffirms the importance of the full and effective implementation of all United Nations standards on human rights in the administration of justice;

Reiterates its call to all Member States to spare no effort in providing for effective legislative and other mechanisms and procedures, as well as adequate resources, to ensure the full implementation of those standards ..."

"Human rights in the administration of justice," General Assembly resolution 58/183 of 18 March 2004, preambular paras. 2,3, and paras. 1 and 2.

[emphasis added.]

"... How to conduct an ethics overhaul: Here's the step-by-step approach the pros usually advise.

Step One Hire an independent investigator to issue a report on the misconduct. Credible former government officials are preferred.

Step Two Write a new ethics policy. Deliver [it] to all company employees with memo from CEO instructing them not to ignore it.

Step Three Expand training. Hire consultants ... start scheduling regular informational sessions on subjects such as sexual harassment, bribery, etc.

Step Four Install a whistle-blowers' hotline. Publicize the phone number ... and establish and detail fully a systematic complaint procedure.

Step Five Hire a full-time ethics officer ... to investigate whistle-blower complaints, supervise training programs, and update the ethics policy."

"Ethics for hire: Laundering images of soiled companies is turning into big business", Business Week International, **July 15, 1996**, pp. 26-28.

[emphasis added.]

While the tiny new UN Ombudsman office moves ahead with its extremely modest functions, at least some major multinational corporations are acting much more decisively.

"The financial sector is being increasingly scrutinized for its role in funding projects associated with human rights abuses ...

The issue is rising on the corporate agenda although there is little consensus on how the risks can be managed, the report, by F&C Asset Management and KPMG, said.

Nine institutions took part in the survey, which identified concerns including employee rights, staff security, litigation, loan default and risks to reputation.

'We are concerned about the reputational risks lenders may incur through their association with controversial clients and projects' ... said Karina Litvack, head of governance and socially responsible investment at F&C Asset Management.

... in the United States, international financial services institutions have been taken to court over their alleged past roles in the former apartheid regime in South Africa.

The report said that companies should develop a comprehensive human rights policy, communicate it to staff and investors and ensure that senior executives are accountable for enforcement."

"Briefcase: Rights become a corporate issue," Reuters, International Herald Tribune, **October 30-31, 2004**.

[Note: At the UN -- the "home" of human rights -- where are the detailed surveys, their wide dissemination, and the firm accountability obligations of Secretariat senior officials? For that matter, who is the UN senior official solely responsible for governance and socially responsible operations?]

In the human rights context, even more than elsewhere, it is time for the UN to firmly abandon its "unaccountable" status, and to very openly and conscientiously begin to practice internally what it preaches to others. This archive notes in its subsection on UN Moral Values and Rectitude -- for Others , that there has been much public talk of "mainstreaming human rights throughout the UN system," but it all seems to date to be too vague, amorphous, and non-transparent.

IO Watch believes that the Secretary-General and the General Assembly should act to promptly establish and implement (after a decade of neglect) a Human Rights Ombudsman as recommended above. If they cannot, or if they choose to dither along for years, they may as well call an end to the UN Global Compact effort, and to the UN's, and UN system's, credibility in the human rights field in general. If the UN itself will not apply independent and transparent monitoring and supervision of its own compliance with UN human rights mandates, why should anyone else bother?