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The Role of Ombudsmen in Securing Transitional Justice

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The term “Ombudsman” originated in Scandinavia. It described a man who held a special status in the community. A man who had the capacity to serve as a citizen’s rights advocate for those members of society whose rights were infringed upon by the community’s leaders. Today, the traditional, or narrow interpretation of Ombudsmanship adheres very closely to this original concept. Under such a definition the Ombudsman’s authority is strictly a function of the moral authority of his or her office, which is inherent to his or her status in the community, which is in turn determined by the decisions and recommendations that the Ombudsman makes.

A broader definition of Ombudsmanship also exists, one in which the authority of the Ombudsman is mandated in law. In this case the decisions and recommendations of the Ombudsman can carry the weight of law, in addition to having a certain moral authority. This point is important, as it is not sufficient for an Ombudsman to be supported only by the rule of law in the technical sense. Even under the broader definition, an Ombudsman must be reinforced and supported by the righteousness of his or her office.

It was not the aim of our discussion session, nor should it be considered the aim of these recommendations to propose which model of Ombudsmanship is the most legitimate or appropriate. Like most other matters of democratic governance, the issue of the ideal form of Ombudsmanship for any given polity can only be decided by its citizens within the context of their unique political reality.

The Objective of our workshop was to discuss the important role that could be played by Ombudsmen in the specific context of transitional states. It is sometimes the case that, in such states, the mainstream mechanisms of the judiciary are either ineffective or non-existent, either due to corruption or to the collapse of democratic processes as the result of conflict. Our purpose was to discuss the potential role of an Ombudsman as a quasi-judicial authority that could play an important role in securing transitional justice. Based on this discussion we have drafted a list of eight recommendations for consideration by the World Movement for Democracy.

Eight Recommendations:

1) Civil society ought to play a greater role in bringing pressure to bear on governments and sectoral organizations to allow for and encourage the establishment of Ombudsmen. We believe that the active participation of civil society in this effort will help to ensure that the protection of civil and human rights will remain the focus of the work of Ombudsmen, thereby enhancing the moral authority underpinning his or her office.

2) In keeping with our first recommendation, we would suggest that the World Movement for Democracy establish a follow-up committee to assist civil society organizations in their efforts to promote and strengthen the Ombudsmanship movement, for lack of a better term, as an important means of securing justice in transitional states.

3) Citizen's and human rights groups need to work diligently to ensure that the office of an Ombudsman is established such that it is completely autonomous, owing no allegiance to any other organization or authority than the citizenry. Furthermore, it is necessary to ensure that Ombudsmanship is established in a non-profit, or charity-based context that would allow for financial self-sustainability. An Ombudsman can only represent the people in a genuinely autonomous manner if he or she owes nothing to the government or societal sector that he or she is intended to monitor. This would include his or her operating budget.

4) Citizen's and human rights groups need to work to ensure that the nomination of Ombudsmen is not achieved through political compromise, as this could only undermine the autonomy of the Ombudsman.

5) Efforts ought to be made to ensure that Ombudsmen are established at all levels of government and society. This is particularly true in diverse societies and decentralized political systems. The distinction here is an important one. The establishment of Ombudsmen at all levels of government will enhance citizens' ability to ensure that their rights are protected against unfair government policies and decisions. The establishment of Ombudsmen at all levels of society refers to sector specific Ombudsmen, such as those that exist in labour unions, the educational field and law enforcement, among others.

6) Prior to the passing of legislation pertaining to the creation of an Ombudsman, it is necessary to define the specific functions and competencies of his or her office, relative to those of officers of the mainstream judiciary. The corollary to this is that it is necessary to

establish in law, the office of the Ombudsman.

7) Civil society at large, and Ombudsmen in particular, need to work to establish an association of Ombudsmen within each country in which the office exists. This will facilitate the sharing of best practices pertaining to the unique character of the work of Ombudsmen.

8) These same groups need to work to encourage the development of domestic and international networks of Ombudsmen's associations between and among levels of government and societal sectors. Again, this will facilitate the sharing of best practices on a much broader scale.

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